

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION**

In re:	§	Chapter 11
	§	
SERTA SIMMONS BEDDING, LLC, <i>et al.</i>	§	Case No. 23-90020
	§	
Debtors.¹	§	(Jointly Administered)
	§	
<hr style="border-top: 1px dashed black;"/>		
SERTA SIMMONS BEDDING, LLC, <i>et al.</i>	§	Adversary Proc. No. 23-09001 (DRJ)
	§	
Plaintiffs and Counterclaim Defendant, v.	§	
	§	
AG CENTRE STREET PARTNERSHIP L.P., <i>et al.</i>	§	
	§	
Defendants and Counterclaim Plaintiffs, v.	§	
	§	
AGF FLOATING RATE INCOME FUND, <i>et al.</i>	§	
	§	
Third Party Defendants.	§	
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**NOTICE OF FILING
CONFIRMATION HEARING CLOSING DEMONSTRATIVE**

PLEASE TAKE NOTICE that, on May 23, 2023, Serta Simmons Bedding, LLC and its debtor affiliates in the above-captioned chapter 11 cases, as debtors and debtors in

¹ The Debtors in these Chapter 11 cases, along with the last four digits of each Debtor's federal tax identification number, are as follows: Dawn Intermediate, LLC (6123); Serta Simmons Bedding, LLC (1874); Serta International Holdco, LLC (6101); National Bedding Company L.L.C. (0695); SSB Manufacturing Company (5743); The Simmons Manufacturing Co., LLC (0960); Dreamwell, Ltd. (2419); SSB Hospitality, LLC (2016); SSB Logistics, LLC (6691); Simmons Bedding Company, LLC (2552); Tuft & Needle, LLC (6215); Tomorrow Sleep LLC (0678); SSB Retail, LLC (9245); and World of Sleep Outlets, LLC (0957). The Debtors' corporate headquarters and service address for these chapter 11 cases is 2451 Industry Avenue, Doraville, Georgia 30360.

possession (collectively, the “**Debtors**”), filed the *Second Amended Joint Chapter 11 Plan of Serta Simmons Bedding, LLC and Its Affiliated Debtors* (Docket No. 977) (as may be amended, modified, or supplemented in accordance with the terms thereof, the “**Plan**”).²

PLEASE TAKE FURTHER NOTICE that, during the combined hearing to consider confirmation of the Plan and the relief sought in the adversary proceeding captioned *Serta Simmons Bedding, LLC, et al. v. AG Centre Street Partnership, L.P., et al.*, Case No. 23-09001 (Bankr. S.D. Tex.) (DRJ) held on **May 25, 2023 at 2:00 p.m. (Central Time)**, counsel for the Debtors presented to the Court a demonstrative in connection with closing arguments, a copy of which is attached hereto as **Exhibit A**.

² Capitalized terms used but not otherwise defined herein shall have the meanings ascribed to such terms in the Plan.

Dated: May 25, 2023
Houston, Texas

Respectfully submitted,

/s/ Gabriel A. Morgan

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David J. Lender (admitted *pro hac vice*)

Alexander W. Welch (admitted *pro hac vice*)

Luna Barrington (admitted *pro hac vice*)

Richard D. Gage (admitted *pro hac vice*)

Taylor B. Dougherty (admitted *pro hac vice*)

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*Attorneys for Debtors
and Debtors in Possession*

Certificate of Service

I hereby certify that on May 25, 2023, a true and correct copy of the foregoing document was served by the Electronic Case Filing System for the United States Bankruptcy Court for the Southern District of Texas, and will be served as set forth in the Affidavit of Service to be filed by the Debtors' claims, noticing, and solicitation agent.

/s/ Gabriel A. Morgan

Gabriel A. Morgan

Exhibit A

Closing Demonstrative

Confirmation Hearing Closing

May 25, 2023

In re Serta Simmons Bedding, LLC
Case No. 23-90020 (DRJ)

Status Update & Roadmap

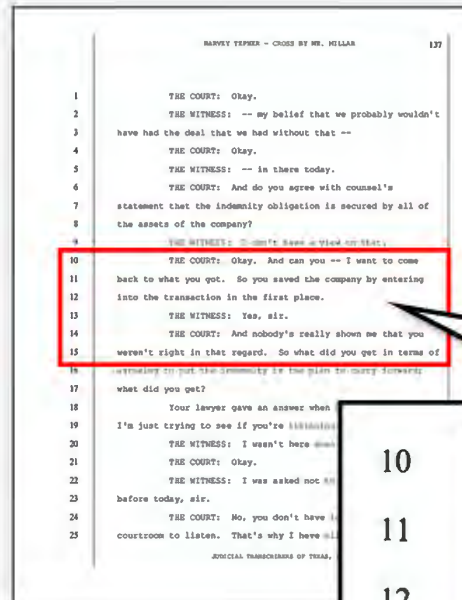
■ Settlement Conference

- Consistent with the Court's *Order Setting Settlement Conference*, Weil hosted a settlement conference on Monday, May 22, 2023, at their offices among the Debtors' management team, the PTL Lenders and their advisors, the Non-PTL Lenders and their advisors, the LCM Lenders and their advisors, and counsel to the Creditors' Committee
- Unfortunately, the parties were unable to reach a settlement

■ Roadmap

- As the Court is aware, the issues related to the Adversary Proceeding are inextricably intertwined with Confirmation of the Plan
- David Lender will begin by addressing arguments specific to the Adversary Proceeding, including the claim of breach of the implied covenant of good faith and fair dealing
- I will next address Confirmation-related topics, including objections raised regarding the indemnity, the Absolute Priority Rule (including the Redemption payment), and the exculpation provisions in the Plan
- Alex Welch will address the remaining Confirmation topics by providing an overview of the other Plan objections (and resolutions, where applicable), the proposed Confirmation Order, and Plan modifications, including removal of the Death Trap





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THE COURT: Okay. And can you -- I want to come back to what you got. So you saved the company by entering into the transaction in the first place.

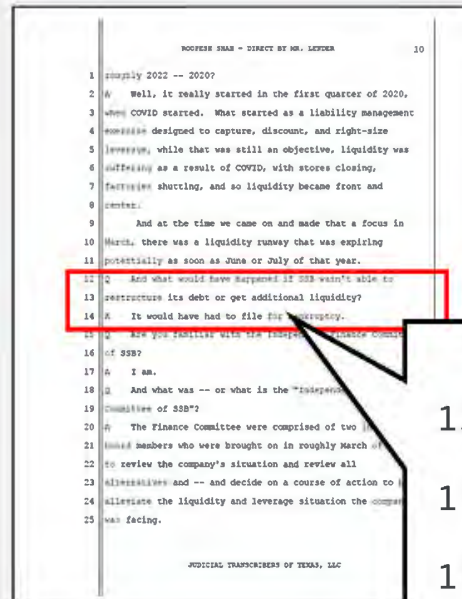
THE WITNESS: Yes, sir.

THE COURT: And nobody's really shown me that you weren't right in that regard. So what did you get in terms of

2020 Transaction Avoided Bankruptcy



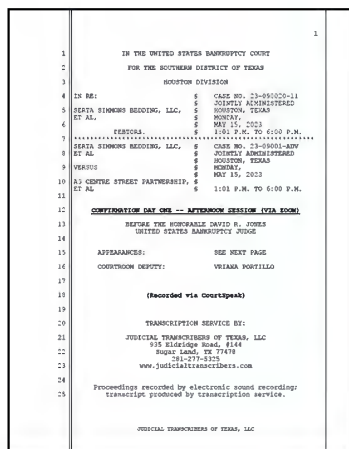
Roopesh Shah



12 Q And what would have happened if SSB wasn't able to

13 restructure its debt or get additional liquidity?

14 A It would have had to file for bankruptcy.



As for the former trademark-related allegations, neither the SOA nor the IAR so much as mentions the rights to the Laugh Factory name and logo. There is nothing in either document to suggest that plaintiffs were bound to allow Basciano to continue to use them for the two-year “consulting period” or any other length of time. Defendants argue that the SOA is merely a summary of terms, not a fully integrated agreement, and that it is implicit in the agreement that the parties contemplated that Basciano would continue to run the Laugh Factory under its original name. They point to references to “the club” and the “World Famous Laugh Factory” as well as the fact that the terms are favorable to Masada. But to the extent that the SOA is not an integrated agreement and that, therefore, the Court may consider parol evidence to modify, explain or supplement it, *see Gualandi v. Adams*, 385 F.3d 236, 241 (2d Cir.2004), defendants point to no testimony or other evidence indicating that Masada promised defendants the use of the Laugh Factory name. While a court may read an implied covenant into a contract where it is necessary to effectuate the purposes of the contract, *DBT GmbH v. J.L. Min. Co.*, 544 F.Supp.2d 364, 384 (S.D.N.Y.2008), “a party who asserts the existence of an implied-in-fact covenant bears a heavy burden ... [and] must prove not merely that it would have been more sensible to include such a covenant, but rather that the particular unexpressed promise sought to be enforced is in fact implicit in the agreement viewed as a whole,” *id.* (quoting *Rowe v. Great Atl. & Pac. Tea Co., Inc.*, 46 N.Y.2d 62, 69, 412 N.Y.S.2d 827, 385 N.E.2d 566 (1978)). Here, even though, as subsequent events demonstrated, Basciano would have been wise to obtain rights to the Laugh Factory name and logo, defendants have not shown that such a promise is necessarily implied in the agreement by which he bought out his business partner. Accordingly, plaintiffs' motion for summary judgment dismissing Count Two of defendants' counterclaims is granted.

In re Solutia, Inc., 2007 WL 1302609, at *10 (Bankr. S.D.N.Y. May 1, 2007)

In re Solutia, Inc., Not Reported in B.R. (2007)
2007 WL 1302609, 48 Bankr.Ct.Dec. 50

2007 WL 1302609
United States Bankruptcy Court,
S.D. New York.

In re SOLUTIA, INC., et al., Debtors.
Wilmington Trust Company, As Successor Indenture Trustee to Jpmorgan Chase Bank, N.A., Plaintiff
v.
Solutia INC., Defendant.

In re Solutia, Inc., Not Reported in B.R. (2007)
2007 WL 1302609, 48 Bankr.Ct.Dec. 50

and the Noteholders, the terms of the contractual relationship agreed to, and so
Debtor's obligations to its Noteholders. *Id.* at 879. Under the plan and express to
not entitled to an Equal and Ratable Lien once the amount of secured debt fell below
not breach any contractual duty to the Noteholders by entering into a new loan agreement.
Notes. The Indenture explicitly and unambiguously sets forth the provisions which
the Indenture Trustee will have an Equal and Ratable Lien so long as the Debtor's
CMTA. See Indenture § 1008. The Intercreditor Agreement sets out the terms for a
Intercreditor Agreement § 8.01. Under New York law, which governs both the Indenture
Court must give effect to the intentions of the parties entering into an agreement. 5
906 F.2d 884, 889 (2d Cir.1990); see also *Crane Co. v. Culver Indus., Inc.*, 171 F.
is unambiguous, a court must interpret it as a matter of law. *Crane* at 757. Words and
and the contract must be construed "so as to give full meaning and effect to all of it."
F.3d 1193, 1199 (2d Cir.1996); *Columbia, N.Y. v. Playgroup*, 56 N.Y.2d 90, 495 N.Y.
67 N.Y.2d 647, 499 N.Y.S.2d 1031, 490 N.E.2d 558 (1986) ("It is axiomatic that
effect to the intent of the parties expressed in the unequivocal language employed,
may neither rewrite, under the guise of interpretation, * * * nor read a contract to
of equity upon the facts of a given case." *Tersviller v. Tersviller*, 206 F.3d 240.

*10 The Indenture was drafted to take a look at a single benchmark. It states that if
the Equal and Ratable Lien is automatically in place. It follows, therefore that when
there is no right to an Equal and Ratable Lien. What goes on without any effort on
effortlessly when secured borrowing falls below the 15 percent threshold. The Ind
Foley, a 35 year subsidiary veneta employed by JPMorgan Chase, a predecessor to
the Equal and Ratable Lien was "a routine event * * * anticipated by the terms of the
Deposition Testimony of Thomas Foley dated April 6, 2006 at 99-100. He
Debtor] decollateralizes. * * * The Company is entitled under the terms of the

The Implied Covenant of Good Faith and Fair Dealing

The Indenture Trustee urges that the Debtor exploited the burden
terms of the Indenture by invoking the doctrine of good faith
faith and fair dealing is a fundamental part of New York contract
party from engaging in conduct that will deprive the other
Co., 880 F.2d 1555, 1560 (2d Cir.1989); *Kirke La Shelle*

Nothing in the doctrine of good faith and fair dealing

for. The implied covenant will only aid and further the explicit terms of the agreement

"which would be inconsistent with other terms of the contractual relationship." *Sabetay v. Sterling Drug, Inc.*, 69 N.Y.2d 329,

335, 514 N.Y.S.2d 209, 212, 506 N.E.2d 919, 922 (1987); *State Street Bank & Trust Co. v. Inversiones Errazuriz Limitada*,

246 F.Supp.2d 231, 256 (S.D.N.Y.2002), *cert. denied*, 543 U.S. 1177, 125 S.Ct. 1309, 161 L.Ed.2d 161 (2005) ("[t]he implied

covenant cannot prevent a party from exercising a right that it has specifically been accorded pursuant to the contract"); *Nat'l*

Westminster Bank, U.S.A. v. Ross, 130 B.R. 656, 679 (S.D.N.Y.1991) ("[t]he parties' contractual rights and liabilities may not

be varied, not their terms eviscerated, by a claim that one party has exercised a contractual right but has failed to do so in good

faith"); *In re Downtown Athletic Club of New York City, Inc.*, 1998 WL 898226 at *11 (Bankr.S.D.N.Y.1998) ("[a] party can

exercise its rights under a contract for any reason it finds satisfactory and such act will not constitute a breach of the implied

covenant of good faith and fair dealing"). Under New York law, a party does not

violate the implied covenant "by acting in its own self interest consistent with its rights under a contract * * * even when such conduct is allegedly unreasonable." See

Suthers v. Amgen, Inc., 441 F.Supp.2d 478, 485 (S.D.N.Y. Apr. 19, 2006) (emphasis added); *M/A-Com Sec. Corp. v. Galesi*,

904 F.2d 134, 136 (2d Cir.1990) ("the implied covenant does not extend so far as to undermine a party's general right to act on

its own interests in a way that may incidentally lessen the other party's anticipated fruits from the contract").

Nothing in the doctrine of good faith and fair dealing allows a court to create contract terms that the parties have not negotiated for. The implied covenant will only aid and further the explicit terms of the agreement and will never impose an obligation "which would be inconsistent with other terms of the contractual relationship." *Sabetay v. Sterling Drug, Inc.*, 69 N.Y.2d 329, 335, 514 N.Y.S.2d 209, 212, 506 N.E.2d 919, 922 (1987); *State Street Bank & Trust Co. v. Inversiones Errazuriz Limitada*, 246 F.Supp.2d 231, 256 (S.D.N.Y.2002), *cert. denied*, 543 U.S. 1177, 125 S.Ct. 1309, 161 L.Ed.2d 161 (2005) ("[t]he implied covenant cannot prevent a party from exercising a right that it has specifically been accorded pursuant to the contract"); *Nat'l Westminster Bank, U.S.A. v. Ross*, 130 B.R. 656, 679 (S.D.N.Y.1991) ("[t]he parties' contractual rights and liabilities may not be varied, not their terms eviscerated, by a claim that one party has exercised a contractual right but has failed to do so in good faith"); *In re Downtown Athletic Club of New York City, Inc.*, 1998 WL 898226 at *11 (Bankr.S.D.N.Y.1998) ("[a] party can exercise its rights under a contract for any reason it finds satisfactory and such act will not constitute a breach of the implied covenant of good faith and fair dealing"). Under New York law, a party does not violate the implied covenant "by acting in its own self interest consistent with its rights under a contract * * * even when such conduct is allegedly unreasonable." See *Suthers v. Amgen, Inc.*, 441 F.Supp.2d 478, 485 (S.D.N.Y. Apr. 19, 2006) (emphasis added); *M/A-Com Sec. Corp. v. Galesi*, 904 F.2d 134, 136 (2d Cir.1990) ("the implied covenant does not extend so far as to undermine a party's general right to act on its own interests in a way that may incidentally lessen the other party's anticipated fruits from the contract").



In re Solitica, Inc., 2007 WL 1302609, at *10-11 (Bankr. S.D.N.Y. May 1, 2007)

The Implied Covenant of Good Faith and Fair Dealing

The Indenture Trustee urges that the Debtor exploited the barren language of the Indenture and seeks to bridge any gap in the terms of the Indenture by invoking the doctrine of good faith and fair dealing. There is no question that the covenant of good faith and fair dealing is a fundamental part of New York contract law. This covenant, implied in all contracts, “precludes each party from engaging in conduct that will deprive the other party of the benefits of their agreement.” *Leberman v. John Blair & Co.*, 880 F.2d 1555, 1560 (2d Cir.1989); *Kirke La Shelle Co. v. Paul Armstrong Co.*, 263 N.Y. 79, 87, 188 N.E. 163, 167 (1933).

Nothing in the doctrine of good faith and fair dealing allows a court to create contract terms that the parties have not negotiated for. The implied covenant will only aid and further the explicit terms of the agreement and will never impose an obligation “which would be inconsistent with other terms of the contractual relationship.” *Sabetay v. Sterling Drug, Inc.*, 69 N.Y.2d 329,

***11** While the Court is not unsympathetic to the Noteholders' arguments, the Court must look to the actual terms of the contractual arrangement between the parties and not equity to determine this matter. None of the testimony or factual findings this Court has made warrant looking beyond the Indenture itself to determine its proper interpretation. Other courts that have been confronted with similar types of claims from bondholders who have lost the value of their bonds, most notably in the leveraged buy-out context, have likewise relied on the actual language of the controlling indenture. Those courts have explored the absence of protective provisions in the indentures and have declined to read into indentures provisions and protections that are not there. *See Metropolitan Life Insurance Company v. RJR Nabisco, Inc.*, 716 F.Supp. 1504 (S.D.N.Y.1989); *Hartford Fire Ins. Co. v. Federated Dep't Stores, Inc.*, 723 F.Supp. 976, 991 (S.D.N.Y.1989).¹⁶

Loose Credit Agreement

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DRAFT – FOR INTERNAL PURPOSES ONLY



Serta Simmons (“SSB”) Recap

- March 2020 • Serta Simmons • Bryce & Austin

Confidential

Confidential – No: For Further Distribution, Proprietary and Confidential Trade Secret.

Debtors' Exhibit No. 11
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AQ_SSBADVERSARY_00001850

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Opportunity Overview

Why Opportunity Exists / How We Make \$ / How We Lose \$

Opportunity: • Exploit weak credit documents to propose a solution to the Company, potentially via the 2L by attaching to IP that can be moved

Opportunity:

- Exploit weak credit documents to propose a solution to the Company, potentially via the 2L by attaching to IP that can be moved

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AQ_SSBADVERSARY_00001903

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Company Overview

Brief Thesis

- While struggling from various industry wide factors especially mattress-in-a-box (“MiB”), the Serta and Simmons brands carry high brand awareness
- Loose credit documents may present a liability management solution anchored by IP / brand value

Brief Thesis

- While struggling from various industry wide factors especially mattress-in-a-box (“MiB”), the Serta and Simmons brands carry high brand awareness
- Loose credit documents may present a liability management solution anchored by IP / brand value

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AQ_SSBADVERSARY_00001905



Angelo Gordon & Gamut Purchased SSB Debt at a Discount

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Prepared at Request of Counsel
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Change in Top 25 First Lien Term Loan Lenders Over Time

(\$ in millions)

Change in First Lien Term Loan Holdings

Lender	3/31/18 - 6/30/18	6/30/18 - 9/30/18	9/30/18 - 12/31/18	12/31/18 - 3/31/19	3/31/19 - 6/30/19	6/30/19 - 12/31/19	12/31/19 - 3/7/20	3/7/20 - 3/23/20	3/23/20 - 3/24/20	3/24/20 - 4/15/20	4/15/20 - 5/11/20	5/11/20 - 5/11/20	Holdings as of 5/11/20
* Angelo Gordon					\$39	\$52	\$55	(1)	(1)	\$51	\$34	\$230	\$230

Change in Top 25 First Lien Term Loan Lenders Over Time

(\$ in millions)

Change in First Lien Term Loan Holdings

Lender	3/31/18 - 6/30/18	6/30/18 - 9/30/18	9/30/18 - 12/31/18	12/31/18 - 3/31/19	3/31/19 - 9/30/19	9/30/19 - 12/17/19	12/17/19 - 2/7/20	2/7/20 - 3/2/20	3/2/20 - 3/24/20	3/24/20 - 4/15/20	4/15/20 - 5/11/20	3/31/18 - 5/11/20	Holdings as of 5/11/20
* Angelo Gordon					\$39	\$52	\$55	(1)	(1)	\$51	\$34	\$230	\$230
Gamut					1	73	7	(0)	3	33	39	156	156

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ConfidentialSSB_LCM_00088453
SSB_ADVERSARY00088453Debtors' Exhibit No. 202
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Section 9.05(g)

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Case 23-09001 Document 1-1 Filed in TXSB on 01/24/23 Page 2 of 478

EXECUTION VERSION

Debt CUSIP: 817518AA9
Facility CUSIP: 817518AB7FIRST LIEN TERM LOAN AGREEMENT
Dated as of November 8, 2016among
DAWN INTERMEDIATE, INC.,
as Borrower,

Case 23-90020 Document 853-5 Filed in TXSB on

Case 23-09001 Document 1-1 Filed in TXSB on

(d) obligations of each Borrower owing to each Disqualified Term Loan, held by such Disqualified Person, purchase price and (ii) the amount that such Disqualified Person paid to acquire them, accrued fees and all other amounts payable to such Disqualified Person to assign, without release or set-off (as defined in this Section 9.05), all of its interests, rights and its most Eligible Assignors (including that (i) as the case may be, Person has received payment of an amount equal to the level Disqualified Person paid for the applicable Loan, plus any other amounts payable to it hereunder from any Borrower; relevant Borrowers shall be liable to the relevant Disqualified Term Loan owing to such Disqualified Person in respect of its interest period relating thereto; (ii) in the case of Section 9.05(a), except that (i) as to payments Section 9.05(a) shall be required with respect to assignment payment acquired by an Affiliated Lender pursuant to this paragraph, compliance with the Affiliated Lender Cap for a period of 60 days following such payment, and (iii) in the case of the appropriate principal amount of Term Loans held by Affiliated Lenders exceeds the Affiliated Lender Cap on the 91st day following such transfer, then such excess amount shall either be (i) returned to the transferee or distributed to the other Borrowers in any of its subsidiaries and related and controlled subsidiaries upon such contribution as (ii) automatically received; and (iv) as to any such Disqualified Person be entitled to receive amounts set forth in Section 9.05(d). Further, any Disqualified Person identified by the Top Borrower to the Administrative Agent (A) shall not be permitted to (i) receive information or reporting provided by any Loan Party, the Administrative Agent or any Lender and/or (ii) attend and/or participate in conference calls or meetings, including calls by the Lender and the Administrative Agent (B); (c) shall not for purposes of determining whether the Requested Lender, the assignor, if Lenders make any Claim, such Lender or each affected Lender have (i) consented (or not consented) to any amendments, modifications, waivers, consents or other terms with respect to any (i) of the terms of the Loan Document or any departure by any Loan Party therefrom, (ii) enforce or acted on any matters related to the Loan Document or (iii) directed or requested the Administrative Agent or any Lender to undertake any action (or refrain from taking any action) with respect to or in relation to any Loan Document have a right to consent (or not consent), otherwise act or direct or request the Administrative Agent or any Lender to take (or refrain from taking) any such action, it being understood that all Loans held by any Disqualified Person shall be deemed to be not outstanding for all purposes (i) obtaining whether the Requested Lender, assignor, Lender, under (i) Claim, each Lender or each affected Lender have taken any action, and (ii) shall be deemed to vote in the case of any Lender that are not Disqualified Persons in any proceeding under any Debtor Relief Law (commenced by or against the Top Borrower or any other Loan Party and (C) shall not be entitled to receive the benefits of Section 9.05. For the sake of clarity, the provisions in the Section 9.05(d) shall not apply to any Person that is an assignor (if any) Disqualified Person of such assignor or not a Disqualified Person.

(e) Notwithstanding anything to the contrary herein, each of Holdings, each other Loan Party and the Lender acknowledge and agree that the Administrative Agent shall not have any responsibility or obligation to determine whether any Lender or potential Lender is a Disqualified Person and the Administrative Agent shall have no liability with respect to any assignment or participation made to a Disqualified Person.

(f) Notwithstanding anything to the contrary contained herein, any Lender may, at any time, assign all or a portion of its rights and obligations under this Agreement in respect of its Term Loans to any Affiliated Lender on a non-pro rata basis (A) through Dutch Auctions open to all Lenders holding the relevant Term Loans on a pro rata basis or (B) through open market purchases, in each case with respect to clauses (A) and (B), without the consent of the Administrative Agent, provided that:

(g) Notwithstanding anything to the contrary contained herein, any Lender may, at any time, assign all or a portion of its rights and obligations under this Agreement in respect of its Term Loans to any Affiliated Lender on a non-pro rata basis (A) through Dutch Auctions open to all Lenders holding the relevant Term Loans on a pro rata basis or (B) through open market purchases, in each case with respect to clauses (A) and (B), without the consent of the Administrative Agent; provided that:

WEL-0047773-10

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Debtors' Exhibit No. 6
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Section 2.18(c)

(c) If any Lender obtains payment (whether voluntary, involuntary, through the exercise of any right of set-off or otherwise) in respect of any principal of or interest on any of its Loans of any Class held by it resulting in such Lender receiving payment of a greater proportion of the aggregate amount of its Loans of such Class and accrued interest thereon than the proportion received by any other Lender with Loans of such Class, then the Lender receiving such greater proportion shall purchase (for Cash at face value) participations in the Loans of other Lenders of such Class at such time outstanding to the extent necessary so that the benefit of all such payments shall be shared by the Lenders of such Class ratably in accordance with the aggregate amount of principal of and accrued interest on their respective Loans of such Class; **provided that (i) if any such participations are purchased and all or any portion of the payment giving rise thereto is recovered, such participations shall be rescinded and the purchase price restored to the extent of such recovery, without interest, and (ii) the provisions of this paragraph shall not apply to (A) any payment made by any Borrower pursuant to and in accordance with the express terms of this Agreement or (B) any payment obtained by any Lender as consideration for the assignment of or sale of a participation in any of its Loans to any permitted assignee or participant, including any payment made or deemed made in connection with Sections 2.22, 2.23, 9.02(c) and/or Section 9.05.** Each Borrower consents to the foregoing and agrees, to the extent it may effectively do so under applicable Requirements of Law, that any Lender acquiring a participation pursuant to the foregoing arrangements may exercise rights of set-off and counterclaim against such Borrower with respect to such participation as fully as if such Lender were a direct creditor of such Borrower in the amount of such participation. The Administrative Agent will keep records (which shall be conclusive and binding in the absence of manifest error) of participations purchased under this Section 2.18(c) and will, in each case, notify the Lenders following any such purchases or repayments. Each Lender that purchases a participation pursuant to this Section 2.18(c) shall, from and after the date of such purchase, have the right to give all notices, requests, demands, directions and other communications under this Agreement with respect to the portion of the Obligations purchased to the same extent as though the purchasing Lender were the original owner of the Obligations purchased. For purposes of subclause (c) of the definition of "Excluded Taxes", any Lender that acquires a participation pursuant to this Section 2.18(c) shall be treated as having acquired such participation on the earlier date(s) on which such Lender acquired the applicable interest(s) in the Commitment(s) and/or Loan(s) to which such participation relates.

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Case 23-09001 Document 1-1 Filed in TXSB on 01/24/23 Page 2 of 478

EXECUTION VERSION

Deal CUSIP: 817518AA9
Facility CUSIP: 817518AB7FIRST LEND TERM LOAN AGREEMENT
Dated as of November 8, 2016among
DAWN INTERMEDIATE, INC.,
as Borrower,

Case 23-90020 Document 853-5 Filed in TXSB on 05/12/23 Page 82 of 478

Case 23-09001 Document 1-1 Filed in TXSB on 01/24/23 Page 82 of 478

(d) Interim Each party's obligations under this Section 2.17 shall survive the termination or replacement of the Administrative Agent or any assignment of rights by, or the replacement of, any Lender, the termination of the Commitments and the repayment, satisfaction or discharge of all obligations under any Loan Document.

Section 2.18. Payments Generally; Allocation of Proceeds; Share of Payments

(a) Unless otherwise specified, the relevant Borrower (or the Top Borrower on behalf of the relevant Borrowers) shall make each payment required to be made by a borrower (whether of principal, interest or fees, or of amounts payable under Sections 2.15, 2.16 or 2.17, or otherwise) prior to 10:00 a.m. on the day when due, in immediately available funds, without set-off or counterclaim. Any amount received after such time as any due date, or the discretion of the Administrative Agent, be deemed to have been received on the next succeeding Business Day for purposes of calculating interest thereon. Each such payment shall be made to the Administrative Agent in the applicable account designated by the Administrative Agent to the Top Borrower, except that any payment made pursuant to Sections 2.15, 2.16, 2.17 or 2.18 shall be made directly to the Person or Persons entitled thereto. The Administrative Agent shall distribute any such payment received by it to the account of any other Person to the appropriate recipient promptly following receipt thereof. Except as provided in Sections 2.18(b) and 2.23, each Borrowing each payment on prepayment of principal of any Borrowing, each payment of interest in respect of the Loans of a given Class and each conversion of any Borrowing to, or continuation of any Borrowing as, a Borrowing of any Type (and of the same Class) shall be allocated pro rata among the Lenders in accordance with their respective Applicable Percentages of the applicable Class. Each Lender agrees that in computing such Lender's portion of any Borrowing to be made hereunder, the Administrative Agent may, in its discretion, round each Lender's percentage of such Borrowing to the next higher or lower whole dollar amount. All payments hereunder shall be made in Dollars. Any payment required to be made by the Administrative Agent hereunder shall be deemed to have been made by the time required if the Administrative Agent shall, at or before such time, have taken the necessary steps to make such payment in accordance with the repurchase or operating procedures of the clearing or settlement system used by the Administrative Agent to make such payment.

(b) Subject in all respects to the provisions of each applicable Indenture Agreement, all proceeds of Collateral secured by the Administrative Agent while in Event of Default shall and all or any portion of the Loans have been assigned hereunder pursuant to Section 2.11, shall be applied, first to the payment of all costs and expenses then due incurred by the Administrative Agent in connection with any collection, sale or realization on Collateral or otherwise in connection with this Agreement, any other Loan Document or any of the Secured Obligations, including all court costs and the fees and expenses of agents and legal counsel; the payment of all amounts made by the Administrative Agent hereunder or under any other Loan Document on behalf of any Loan Party and any other costs or expenses incurred in connection with the exercise of any right to remedy hereunder or under any other Loan Document; (2) (A) in a pro rata basis to pay any fees, expenses or expense reimbursements then due to the Administrative Agent (other than those covered in clause (b)(i) above) from the Top Borrower concerning Secured Obligations; and (B) on a pro rata basis in accordance with the amounts of the Secured Obligations (other than contingent interests) obligations for which no claim has yet been made) owed to the Secured Parties on the date of distribution, to the payment in full of the Secured Obligations; (3) (A) as provided in the Indenture Agreement, and (B) to, or at the direction of the Top Borrower or as a result of the operation of the applicable law, to the extent of the proceeds of the Collateral.

(c) If any Lender obtains payment (whether voluntary, involuntary, through the exercise of any right of set-off or otherwise) in respect of any principal of or interest on any of its Loans of any Class held by it resulting in such Lender receiving payment of a greater proportion of the aggregate amount of its Loans of such Class and accrued interest thereon than the proportion received by any other Lender with Loans of such Class, then the Lender receiving such greater proportion shall purchase (for Cash at face value) participations in the Loans of other Lenders of such Class at such time outstanding to the extent necessary so that the benefit of all such payments shall be shared by the Lenders of such Class ratably in accordance with the aggregate

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Debtors' Exhibit No. 5
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Where Was LCM?



Angelo Gordon Would Love to Own the Business

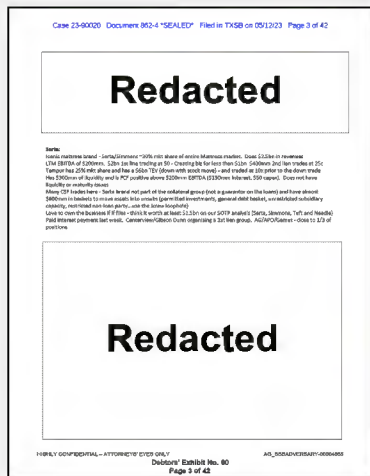
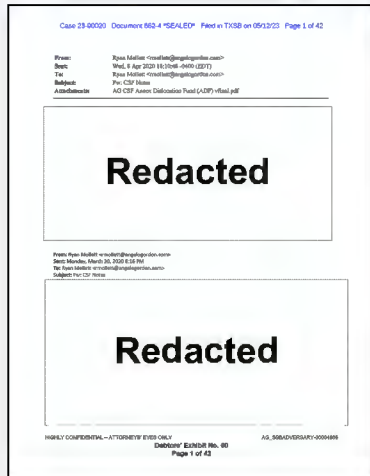
From: Ryan Mollett <rmollett@angelogordon.com>
Sent: Wed, 8 Apr 2020 18:10:48 -0400 (EDT)
To: Ryan Mollett <rmollett@angelogordon.com>
Subject: Fw: CSF Notes
Attachments: AG CSF Annex Dislocation Fund (ADF) vfinal.pdf

Serta:

Iconic mattress brand - Serta/Simmons ~30% mkt share of entire Mattress market. Does \$2.5bn in revenues LTM EBITDA of \$200mm. \$2bn 1st line trading at 50 - Creating biz for less than \$1bn \$400mm 2nd lien trades at 25c Tempur has 25% mkt share and has a \$6bn TEV (down with stock move) - and traded at 10x prior to the down trade Has \$300mm of liquidity and is FCF positive above \$200mm EBITDA (\$130mm Interest, \$50 capex). Does not have liquidity or maturity issues.

Many CSF trades here - Serta brand not part of the collateral group (not a guarantor on the loans) and have almost \$600mm in baskets to move assets into unsubs (permitted investments, general debt basket, unrestricted subsidiary capacity, restricted non-loan party...use the Jcrew loophole)

Love to own the business if it files - think it worth at least \$1.5bn on our SOTP analysis (Serta, Simmons, Tuft and Needle) Paid interest payment last week. Centerview/Gibson Dunn organizing a 1st lien group. AG/APO/Gamut - close to 1/3 of positions



So Would Apollo

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Attorney Client Work Product

Privileged and Confidential

INVESTMENT MEMORANDUM

To: Interested Parties
 From: David Chom, Theo Kwon
 Cc: Andrew Barakat
 Date: November 18, 2019
 Re: Potential Fund IX Bid for Investment in Serta's Securities

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Attorney Client Work Product

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Barakat Securities (Lum. 1)																																																																																		
	10/1/19	10/1/20	10/1/21	10/1/22	10/1/23	10/1/24	10/1/25	10/1/26	10/1/27	10/1/28	10/1/29	10/1/30	10/1/31	10/1/32	10/1/33	10/1/34	10/1/35	10/1/36	10/1/37	10/1/38	10/1/39	10/1/40	10/1/41	10/1/42	10/1/43	10/1/44	10/1/45	10/1/46	10/1/47	10/1/48	10/1/49	10/1/50	10/1/51	10/1/52	10/1/53	10/1/54	10/1/55	10/1/56	10/1/57	10/1/58	10/1/59	10/1/60	10/1/61	10/1/62	10/1/63	10/1/64	10/1/65	10/1/66	10/1/67	10/1/68	10/1/69	10/1/70	10/1/71	10/1/72	10/1/73	10/1/74	10/1/75	10/1/76	10/1/77	10/1/78	10/1/79	10/1/80	10/1/81	10/1/82	10/1/83	10/1/84	10/1/85	10/1/86	10/1/87	10/1/88	10/1/89	10/1/90	10/1/91	10/1/92	10/1/93	10/1/94	10/1/95	10/1/96	10/1/97	10/1/98	10/1/99	10/1/100
10/1/19	10/1/20	10/1/21	10/1/22	10/1/23	10/1/24	10/1/25	10/1/26	10/1/27	10/1/28	10/1/29	10/1/30	10/1/31	10/1/32	10/1/33	10/1/34	10/1/35	10/1/36	10/1/37	10/1/38	10/1/39	10/1/40	10/1/41	10/1/42	10/1/43	10/1/44	10/1/45	10/1/46	10/1/47	10/1/48	10/1/49	10/1/50	10/1/51	10/1/52	10/1/53	10/1/54	10/1/55	10/1/56	10/1/57	10/1/58	10/1/59	10/1/60	10/1/61	10/1/62	10/1/63	10/1/64	10/1/65	10/1/66	10/1/67	10/1/68	10/1/69	10/1/70	10/1/71	10/1/72	10/1/73	10/1/74	10/1/75	10/1/76	10/1/77	10/1/78	10/1/79	10/1/80	10/1/81	10/1/82	10/1/83	10/1/84	10/1/85	10/1/86	10/1/87	10/1/88	10/1/89	10/1/90	10/1/91	10/1/92	10/1/93	10/1/94	10/1/95	10/1/96	10/1/97	10/1/98	10/1/99	10/1/100	

Next Steps and Recommendation

In summary, we believe a potential distressed-for-control investment into Serta's \$1.9 billion 1st Lien Term Loan presents a compelling opportunity to invest at the top of the capital structure at an attractive value for a franchise asset that we would want the Apollo funds to own. We recommend and are seeking approval for Fund IX to start accumulating Serta's 1st Lien Term Loan at a target price of 52 or lower.

Next Steps and Recommendation

In summary, we believe a potential distressed-for-control investment into Serta's \$1.9 billion 1st Lien Term Loan presents a compelling opportunity to invest at the top of the capital structure at an attractive value for a franchise asset that we would want the Apollo funds to own. We recommend and are seeking approval for Fund IX to start accumulating Serta's 1st Lien Term Loan at a target price of 52 or lower.

19

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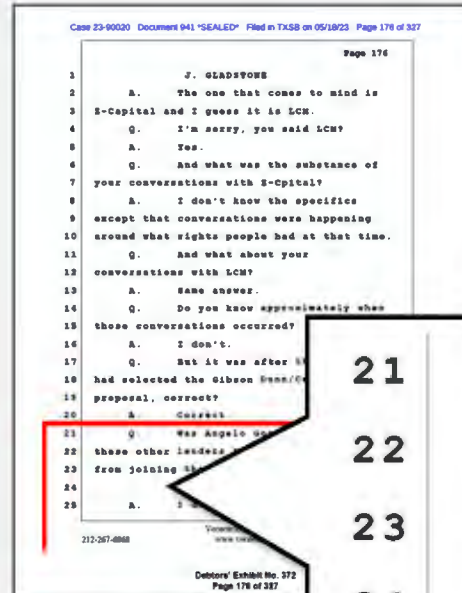
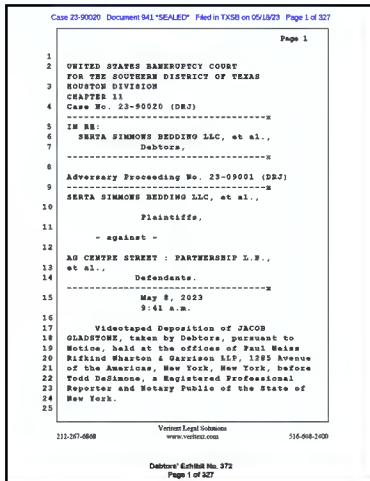
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Attempts to Block the 2020 Transaction



Jacob Gladstone



21 Q. Was Angelo Gordon contacting
 22 these other lenders to try to prevent them
 23 from joining the Centerview group?
 24 MR. O'LOUGHLIN: Objection.
 25 A. I don't know the specific
 2 conversations that took place, all I know
 3 is that they took place.

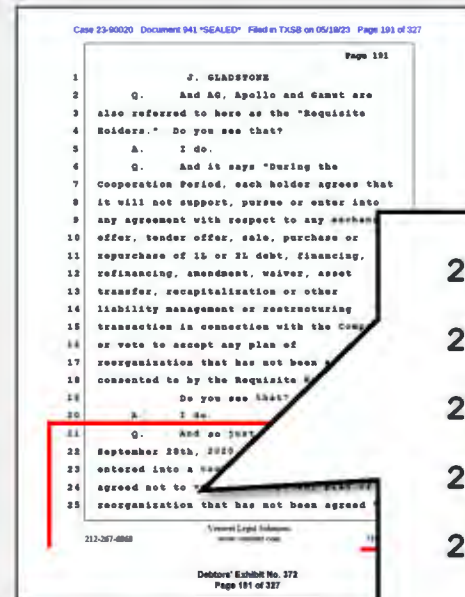
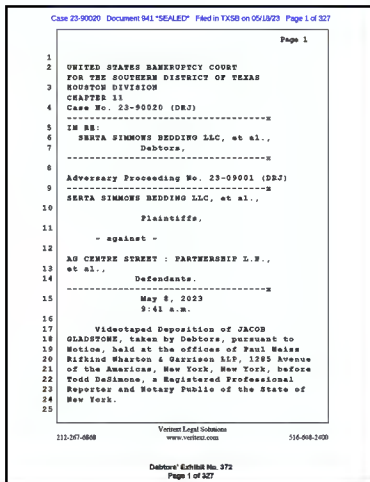


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Agreement Not To Vote For Plan



Jacob Gladstone



21 Q. And so just so we're clear, on
22 September 28th, 2020, AG, Apollo and Gamut
23 entered into a cooperation agreement and
24 agreed not to vote to accept any plan of
25 reorganization that has not been agreed to

2 or consented to by the requisite holders,
3 correct?

4 A. Correct.

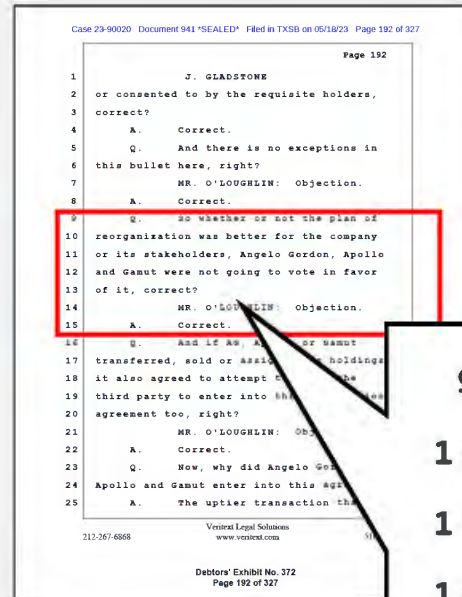
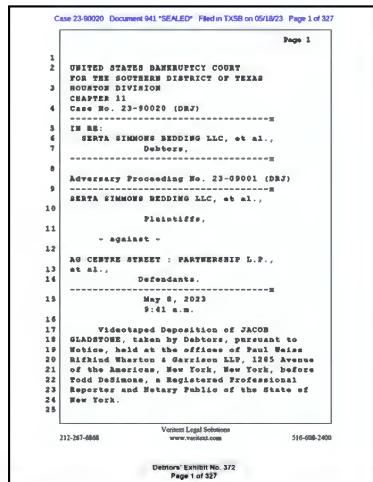


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Agreement Not To Vote For Plan



Jacob Gladstone



9 Q. So whether or not the plan of
10 reorganization was better for the company
11 or its stakeholders, Angelo Gordon, Apollo
12 and Gamut were not going to vote in favor
13 of it, correct?

14 MR. O'LOUGHLIN: Objection.

15 A. Correct.



SSB Did Not Breach the Implied Covenant

- **SSB entered into the 2020 Transaction because it was in financial trouble.**
- **SSB engaged in a good faith competitive process.**
- **SSB's independent finance committee evaluated the various proposals and selected the best deal.**



SSB Did Not Breach the Implied Covenant

- **SSB entered into the 2020 Transaction because it was in financial trouble.**
- SSB engaged in a good faith competitive process.
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March 31, 2020 Finance Committee Meeting

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FINAL
MINUTES OF THE
FINANCE COMMITTEE
OF THE
BOARD OF MANAGERS
OF
DAWN INTERMEDIATE, LLC

March 31, 2020

A meeting of the Finance Committee of the Board of Managers (the "Board") of Dawn Intermediate, LLC (the "Company") was held telephonically on Tuesday, March 31, 2020.

The following Committee members were present for all or a portion of the meeting:

Jean Edison
Harvey Tepner

Board member David Swift was also present for the meeting. Also present by invitation for all or portions of the meeting were the following:

Barry Canipe – Executive Vice President, Chief Financial Officer, Treasurer and Assistant Secretary, Dawn Intermediate, LLC ("Dawn Intermediate");
Kristen McGuffey – Executive Vice President, General Counsel and Secretary, Dawn Intermediate;

Ray Schrock – Partner, Weil, Gotshal & Manges LLP ("Weil");
Ryan Dahl – Partner, Weil;
Alex Welch – Associate, Weil;

Roopesh Shah – Senior Managing Director, Evercore Inc. ("Evercore"); and
Brent Banks – Managing Director, Evercore.

The meeting was called to order. All Committee members identified as well as the guests above were present at the beginning of the meeting.

I. Business Overview

As the first order of business, Mr. Banks with reference to a presentation prepared by Evercore and Weil which appears as Appendix A to these minutes (the "Presentation"), gave an update on the financial and operational issues arising from the continuing COVID-19 situation, enquires received by the Company's lenders, and efforts being undertaken to obtain additional liquidity. Mr. Banks referenced the engagement of FTI Consulting to assist the Company with its cashflow projections and business plan.

Messrs. Swift and Canipe then provided further details on the Company's operations, including the impact of the COVID-19 situation on sales, collection of receivables and terms of accounts payable, and efforts the Company was taking to cut costs and preserve cash. A discussion ensued, and questions were asked and answered regarding sales, cash flows, and

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Debtors' Exhibit No. 51
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COVID Adversely Impacted SSB's Business

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Situation Overview

Following a strong start to the year, COVID-19 has had a material impact on SSB's and its customers' performance. The near-term focus of the Company has shifted from executing a liability management transaction to focusing on near-term liquidity management

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Situation Overview

Following a strong start to the year, COVID-19 has had a material impact on SSB's and its customers' performance. The near-term focus of the Company has shifted from executing a liability management transaction to focusing on near-term liquidity management

- ▶ The Company has also hired FTI to provide additional forecasting and cash management support throughout this volatile period
- ▶ Simultaneously, the Company's advisors have begun contingency planning in the event near-term capital will be unavailable to bridge any forecasted liquidity shortfalls

EVERCORE Weil

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FINAL MINUTES OF THE FINANCE COMMITTEE OF THE BOARD OF MANAGERS OF DAWN INTERESTS, LLC

March 26, 2020

A meeting of the Finance Committee of the Board of Managers of the "Trust" and the "Trustee" was held telephonically on Tuesday, March 24, 2020.

The following Committee members were present for all or a portion of the meeting:

James Nelson
Harvey Tepper

Board member David Smith was also present for the meeting. Also present by invitation for all or portions of the meeting were the following:

Bruce Cramer - Executive Vice President, Chief Financial Officer, Treasurer and Assistant Secretary, Dawn Interests, LLC ("Dawn Interests");
Kathleen McCullough - Executive Vice President, General Counsel and Secretary, Dawn Interests;

Ray Schindler - Partner, Weil, Gottschal & Manges LLP ("WGM");

Ryan Smith - Partner, WGM;

Alan Webb - Assistant Vice

President, Smith - Senior Managing Director, Evercore Inc. ("Evercore"); and

David Smith - Managing Director, Evercore.

The meeting was called to order. All Committee members identified as well as the guest share

were present at the beginning of the meeting.

I. Business Overview

As the first order of business, Mr. Smith made reference to a presentation prepared by Evercore and WGM which appears in Attachment A to these minutes. The presentation gave an update on the financial and operational status arising from the continuing COVID-19 situation, requests received by the Company's lenders, and efforts being undertaken to address additional requests. Mr. Smith discussed the engagement of FTI Consulting to assist the Company with its cash flow projections and business plan.

Members Smith and Cramer then provided further details on the Company's operations, including the impact of the COVID-19 situation on sales, collection of receivables and terms of accounts payable, and efforts the Company was taking to raise cash and preserve cash. A document titled, and questions were asked and answered regarding sales, cash flow, and

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COVID Adversely Impacted SSB's Business

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Situation Overview

Following a strong start to the year, COVID-19 has had a material impact on SSB's and its customers' performance. The near-term focus of the Company has shifted from executing a liability management transaction to focusing on near-term liquidity management

- Since last speaking with the Finance Committee on March 25, certain customers of SSB have sought to take actions adverse to the Company as retail locations have shut down. Rapid changes to customers' working capital management and deterioration of

- Current cash flow forecasts indicate the Company may run out of liquidity as soon as early July, necessitating an evaluation of transaction alternatives to raise near-term liquidity

have been successful at pushing back on customer requests, there will be payables terms

- Current cash flow forecasts indicate the Company may run out of liquidity as soon as early July, necessitating an evaluation of transaction alternatives to raise near-term liquidity

- ▶ To that end, Evercore has reached out to 11 potential "First Lien, Last Out" ABL ("FLLO ABL") lenders, and is seeking preliminary proposals for incremental liquidity from certain parties by the end of this week
- ▶ The Company has also hired FTI to provide additional forecasting and cash management support throughout this volatile period
- ▶ Simultaneously, the Company's advisors have begun contingency planning in the event near-term capital will be unavailable to bridge any forecasted liquidity shortfalls

EVERCORE Weil

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FINANCIAL COMMITTEE OF THE BOARD OF MANAGERS OF DAWN INTERESTS, LLC

March 24, 2020

A meeting of the Finance Committee of the Board of Managers (the "Board") of Dawn Interests, LLC (the "Company") was held telephonically on Tuesday, March 24, 2020.

The following Committee members were present for all or a portion of the meeting:

James Wilson
Harvey Tepper

Board member David Smith was also present for the meeting. Also present by invitation for all or portions of the meeting were the following:

Bruce Cramer - Executive Vice President, Chief Financial Officer, Treasurer and Assistant Secretary, Dawn Interests, LLC ("Dawn Interests");
Randall McCulloch - Executive Vice President, General Counsel and Secretary, Dawn Interests;

Ray Schindler - Partner, Weil, Gottschal & Manges LLP ("Weil");

Ryan Smith - Partner, Weil;

Alan Wolfe - Assistant Vice

President, Smith Barney; and

David Smith - Managing Director, Dawn Interests.

The meeting was called to order. All Committee members identified as well as the guests above were present at the beginning of the meeting.

I. Business Overview

As the first order of business, Mr. Smith made reference to a presentation prepared by Evercore and Weil which appears in Attachment A to these minutes (the "Presentation"). It gave an update on the financial and operational status arising from the ongoing COVID-19 situation, requests received by the Company's lenders, and efforts being undertaken to obtain additional liquidity. Mr. Smith discussed the engagement of FTI Consulting to assist the Company with its cash flow projections and business plan.

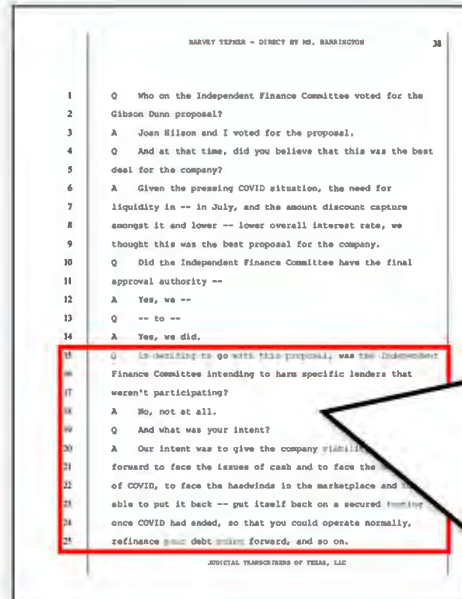
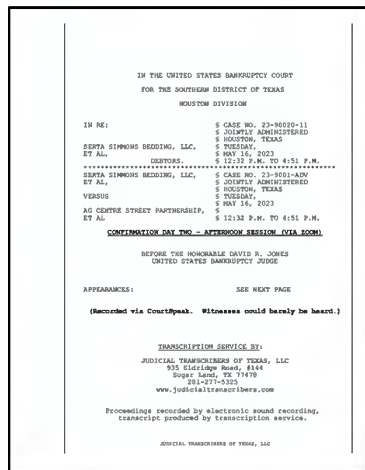
Members Smith and Cramer then provided further details on the Company's operations, including the impact of the COVID-19 situation on sales, collection of receivables and terms of accounts payable, and efforts the Company was taking to use cash and generate cash. A discussion ensued, and questions were asked and answered regarding sales, cash flow, and

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SSB_ADVERSARY00089013

2020 Transaction Intended to Provide Viability



Harvey Tepner



15 Q In deciding to go with this proposal, was the Independent
16 Finance Committee intending to harm specific lenders that
17 weren't participating?
18 A No, not at all.
19 Q And what was your intent?
20 A Our intent was to give the company viability for moving
21 forward to face the issues of cash and to face the headwinds
22 of COVID, to face the headwinds in the marketplace and to be
23 able to put it back -- put itself back on a secured footing
24 once COVID had ended, so that you could operate normally,
25 refinance your debt going forward, and so on.



SSB Did Not Breach the Implied Covenant

- SSB entered into the 2020 Transaction because it was in financial trouble.
- **SSB engaged in a good faith competitive process.**
- SSB's independent finance committee evaluated the various proposals and selected the best deal.



April 7, 2020 Finance Committee Meeting

Case 23-90020 Document 862-2 *SEALED* Filed in TXSB on 05/12/23 Page 6 of 29

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Executive Summary

As the Company pursues near-term liquidity alternatives, it should also work in parallel to engage existing

- The Company continues to pursue the following liquidity alternatives:
 - ▶ **Sale Leaseback:** Could yield \$30mm of liquidity
 - ▶ **Sale of SSB's Interest in China JV:** Being explored through an advisor-run sale process
 - ▶ **Serta Financing:** Raise up to \$160mm of financing secured by a pledge of the stock of NBC's ownership interest in Serta, Inc. (dependent on views of Loan-to-Value)
 - ▶ **FLLO ABL:** Appears less and less likely that the transaction will result in significant liquidity (Pathlight and Great American continue to do work on an FLLO ABL while TSSP is considering alternative structures; all other lenders have fallen away)
- The existing lenders could be the most likely source of liquidity or a comprehensive transaction. Sequencing and engagement is critical to achieve the optimal outcome for the Company in the following potential transactions:

EVERCORE **Weil**

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April 10, 2020 Finance Committee Meeting

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**FINAL
MINUTES OF THE
FINANCE COMMITTEE
OF THE
BOARD OF MANAGERS
OF
DAWN INTERMEDIATE, LLC**

April 10, 2020

A meeting of the Finance Committee of the Board of Managers (the "Board") of Dawn Intermediate, LLC (the "Company") was held telephonically on Friday, April 10, 2020.

The following Committee members were present for all or a portion of the meeting:

Joan Hilson
Harvey Tepner

Board member David Swift was also present for the meeting. Also present by invitation for all or portions of the meeting were the following:

Barry Canipe – Executive Vice President, Chief Financial Officer, Treasurer and Assistant Secretary, Dawn Intermediate, LLC ("Dawn Intermediate");
Kristen McGuffey – Executive Vice President, General Counsel and Secretary, Dawn Intermediate;

Ray Schrock – Partner, Wolf, Goodrich & Mangos LLP ("Wolf");
Alex Welch – Associate, Wolf;

Roopesh Shah – Senior Managing Director, Evercore Inc. ("Evercore");
Brent Banks – Managing Director, Evercore; and

Armen Emrikian – Senior Managing Director, FTI Consulting, Inc. ("FTI").

The meeting was called to order. All Confidential members identified as well as the guests shown were present at the beginning of the meeting.

1. Lender Engagement

As the first order of business, Mr. Banks, with reference to a presentation which appears as Exhibit A (the "Presentation"), gave an update on engagement with the various lender groups who are potential participants in liquidity or broader liability management transaction. A discussion ensued and questions were asked and answered. In response to a question from Mr. Tepner regarding the outreach strategy, Mr. Shah noted the object of the engagement process was to obtain multiple proposals for any transaction and enable a competitive process to obtain the best terms available for the Company.

Mr. Banks then gave an update on the preparation of materials to be provided to potential lenders, and the potential terms for a transaction. A discussion ensued and questions were asked.

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Debtors' Exhibit No. 63
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1. Lender Engagement

As the first order of business, Mr. Banks, with reference to a presentation which appears as Exhibit A (the "Presentation"), gave an update on engagement with the various lender groups who are potential participants in liquidity or broader liability management transaction. A discussion ensued and questions were asked and answered. In response to a question from Mr. Tepner regarding the outreach strategy, Mr. Shah noted the object of the engagement process was to obtain multiple proposals for any transaction and enable a competitive process to obtain the best terms available for the Company.



Best Deal for the Company



Roopesh Shah

1	IN THE UNITED STATES BANKRUPTCY COURT	1
2	FOR THE SOUTHERN DISTRICT OF TEXAS	
3	HOUSTON DIVISION	
4	IN RE:	6 CASE NO. 23-01020-11
5	SERTA SIMMONS RECEIVING, LLC,	6 JOSEPH A. HENNINGER
6	ET AL,	6 HOUSTON, TEXAS
7	FEEDBACK	6 MAY 15, 2023
8	SERTA SIMMONS RECEIVING, LLC,	6 1:01 P.M. TO 6:00 P.M.
9	ET AL	6 CASE NO. 23-01020-11
10	VARIOUS	6 JOSEPH A. HENNINGER
11	AS CENTRE STREET PARTNERSHIP,	6 HOUSTON, TEXAS
12	ET AL	6 MAY 15, 2023
13		6 1:01 P.M. TO 6:00 P.M.
14	<u>CONFIDENTIAL DAY ONE -- AFTERNOON SESSION (VIA ROOM)</u>	
15	REFUSE THE HONORABLE DAVID R. JONES	
16	UNITED STATES BANKRUPTCY JUDGE	
17	APPEARANCES:	SEE NEXT PAGE
18	COURTROOM DEPUTY:	VERA PORTILLO
19		
20	(Recorded via CourtSpeak)	
21	TRANSCRIPTION SERVICE BY:	
22	JUDICIAL TRANSCRIPTERS OF TEXAS, LLC	
23	575 ELIZABETH BLVD., #140	
24	HOUSTON, TEXAS 77078	
25	www.judicialtransmitters.com	
	Proceedings recorded by electronic sound recording;	
	transcript produced by transcription service.	
	JUDICIAL TRANSCRIPTERS OF TEXAS, LLC	

ROOPESH SHAH - DIRECT BY MR. LENDER 16

1 restructuring process would be a competitive process?

2 A Yes, been -- that's the reason we went out to a number

3 of parties, you know, a dozen or more parties, and had the

4 an-talk provision, was to run a specifically competitive

5 process.

6 Q And how would a competitive process help get the best

7 deal for the company?

8 A It allows us to get multiple bids and keep horses

9 separate, if you will, so we can play terms off of each

10 other to get the best terms for the company.

11 Q Do you recall having discussions with the independent

12 board committee about enabling a competitive process?

13 A I do. It was almost a predicate to the entire deal.

14 That's how we approach, you know, virtually every deal we

15 do. And from the beginning, it was set up to be a

16 competitive process, where we told the Finance Committee the

17 number of parties and, in an interactive way, the

18 would go to by definition to create that competitive

19 Q All right. Let me just ask you briefly to re-

20 view exhibit. We're going to return to the email

21 minute.

22 MR. LENDER: And this, for the Record,

23 Document 862-7, Debtors' Exhibit Number 63.

24 BY MR. LENDER:

25 Q Is Debtors' Exhibit 63 a copy of the April

JUDICIAL TRANSCRIPTERS OF TEXAS, LLC

6 Q And how would a competitive process help get the best

7 deal for the company?

8 A It allows us to get multiple bids and keep horses

9 separate, if you will, so we can play terms off of each

10 other to get the best terms for the company.



Reached Out to Numerous Parties

Case 23-90020 Document 862-6 *SEALED* Filed in TXSB on 05/12/23 Page 1 of 3

Message

From: Shah, Roopesh [Roopesh.Shah@evercore.com]
 Sent: 4/9/2020 4:31:04 PM
 To: Banks, Brent [Brent.Banks@evercore.com]; Dalal, Ankit [Ankit.Dalal@evercore.com]; Augustiak, Adam [Adam.Augusiak@evercore.com]; Li, Alex [Alex.Li@evercore.com]
 Subject: RE: SSB Deliverables

I think should pair them up with Monarch. Would not pair them up with Angelo. Are they OK with that?

Roopesh Shah
 Senior Managing Director
 EVERCORE
 55 East 52nd Street
 New York, NY 10055
 Office: 212-336-6631 | Cell: 917-747-6649
 Email: roopesh.shah@evercore.com

From: Banks, Brent
 Sent: Thursday, April 09, 2020 12:28 PM
 To: Shah, Roopesh; Dalal, Ankit; Augustiak, Adam; Li, Alex
 Subject: RE: SSB Deliverables

Do you think PIMCO would do this?

I just spoke hung up with TSSP. They asked if we are reaching out to anyone else, told them... look... expect a competitive process. They said, if Monarch and Angelo are going to be included... its going to be very awkward for them to be looking at this separately. Their first preference is for them not to be included and they would prefer to just do it alone. If we are telling them they are going to be part of the process, they would just want to be paired up early on.... And would expect we would go out to other 3rd parties to run a competitive process ...

They also suggested just offering up a pledge of Serta Inc (as part of IPCo) and dropping in the real estate assets. Told them we would consider it

4/9

- Discuss structure with TSSP (already under NDA, 2L)
- Finalize NDA; what did we want to do with no talk (to those outside the group)?
- Reach out to existing lenders individually and negotiate NDA with an eye towards finalizing Sunday-Tuesday
- Oaktree (1L)
- [Gamut] (1L)
- TSSP (2L) (already under NDA)
- Angelo (2L)
- Monarch (2L)
- Blackstone/GSO is a cross holder
- Apollo (DQ)
- Reach out to third party investors
- HPS
- Fortress
- Centerbridge
- Blue Torch
- PIMCO
- Silver Point

Week of 4/13 or 4/20

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Debtors' Exhibit No. 62
 Page 1 of 3

EVERCORE-SSB00008281
 SSB_ADVERSARY00129549

From: Banks, Brent
Sent: Thursday, April 09, 2020 12:28 PM
To: Shah, Roopesh; Dalal, Ankit; Augustiak, Adam; Li, Alex
Subject: RE: SSB Deliverables

Do you think PIMCO would do this?

I just spoke hung up with TSSP. They asked if we are reaching out to anyone else, told them... look... expect a competitive process. They said, if Monarch and Angelo are going to be included... Its going to be very awkward for them to be looking at this separately. Their first preference is for them not to be included and they would prefer to just do it alone. If we are telling them they are going to be part of the process, they would just want to be paired up early on.... And would expect we would go out to other 3rd parties to run a competitive process ...

They also suggested just offering up a pledge of Serta Inc (as part of IPCo) and dropping in the real estate assets. Told them we would consider it

4/9

- Discuss structure with TSSP (already under NDA, 2L)
 - Finalize NDA; what did we want to do with no talk (to those outside the group)?
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 - TSSP (2L) (already under NDA)
 - Angelo (2L)
 - Monarch (2L)
 - Blackstone/GSO is a cross holder
 - Apollo (DQ)
 - Reach out to third party investors
 - HPS
 - Fortress
 - Centerbridge
 - Blue Torch
 - PIMCO
 - Silver Point
- Week of 4/13 or 4/20



Angelo Gordon March 2020 Proposal

Case 23-90020 Document 861-23 "SEALED" Filed in TXSB on 05/12/23 Page 2 of 5

DRAFT - FOR INTERNAL PURPOSES ONLY



Proposed Transaction

March 2020 - Serta Simmons

Case 23-90020 Document 861-23 "SEALED" Filed in TXSB on 05/12/23 Page 4 of 5

SSB Proposed Transaction

- Transaction Description**
- Serta Simmons ("SSB" or "the Company") invests assets into an Unrestricted Subsidiary ("URS")
 - Angelo Gordon ("AG") or an Ad Hoc Group ("AHG") funds new debt at the URS and the Company upstreams debt proceeds to the restricted group
 - The Company uses proceeds to purchase loans of AHG and opportunistically purchase other loans

- Transaction Steps**
- Set up new URS and transfer assets including the equity of Serta Inc. and up to \$575M of other to be determined assets
 - Assets can include but are not limited to IP, an entire segment (Tuft & Needle) and real estate
 - AHG funds debt into the URS in an amount equal to the exchange ratio for AHG 1L / 2L TL's¹
 - AHG backstops \$200M of new money to URS for loans senior to URS debt issued in exchange
 - The Company can seek to raise funds in the market instead of borrowing from AHG
 - URS distributes debt proceeds to the restricted group
 - The Company uses debt proceeds to purchase AHG loans
 - Company uses excess debt proceeds to opportunistically purchase 1L / 2L TL's in the open market or subsequent transactions

- Key Assumptions**
- New money: \$200M
 - AHG 1L TL Amount: \$300M
 - 1L Exchange price: 80 (~15 point premium to current market)
 - AHG 2L TL Amount: \$200M
 - 2L Exchange price: 50 (~20 point premium to current market)

- Benefits**
- Transaction solely utilizes pre-negotiated debt baskets, presenting low execution risk given small group of counterparties and no minimum participation threshold
 - Allows the Company to capture discount, leverage, and reduce interest expense
 - AG is only stakeholder impaired by transaction, maximizing the probability that all lenders recover par value on their claims
 - URS can upstream debt proceeds to restricted group, thereby

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Debtors' Exhibit No. 29
Page 4 of 5

ADVENT00002747
SSB_ADVERSARY00002295

Key Assumptions

- New money: \$200M
- AHG 1L TL Amount: \$300M
- 1L Exchange price: 80 (~15 point premium to current market)
- AHG 2L TL Amount: \$200M
- 2L Exchange price: 50 (~20 point premium to current market)

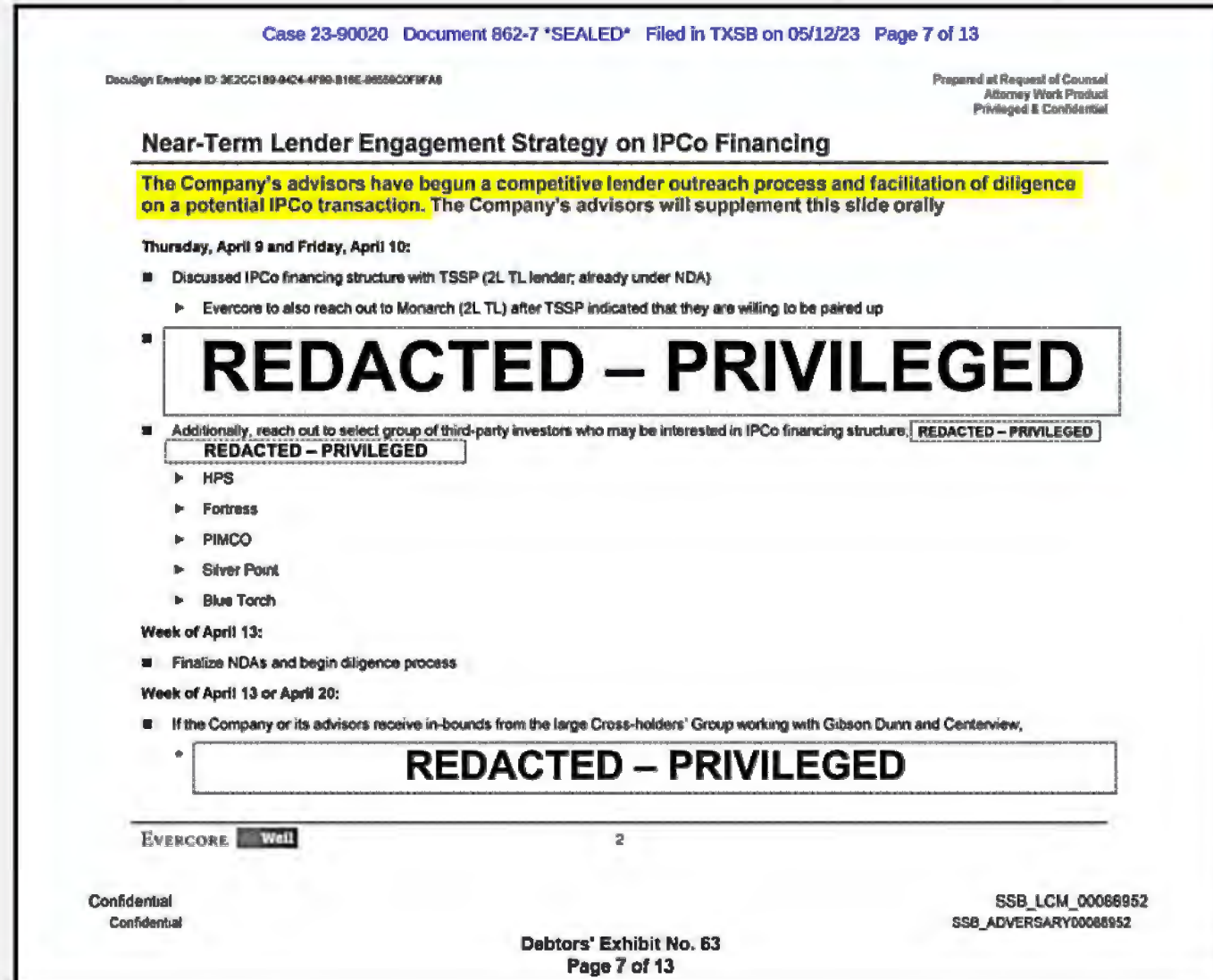
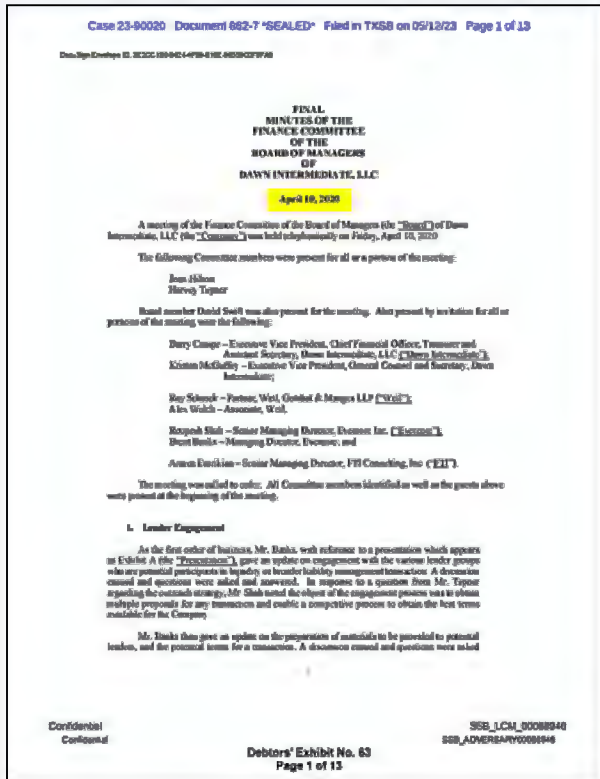
Transaction Steps

- Set up new URS and transfer assets including the equity of Serta Inc. and up to \$575M of other to be determined assets
 - Assets can include but are not limited to IP, an entire segment (Tuft & Needle) and real estate
- AHG funds debt into the URS in an amount equal to the exchange ratio for AHG 1L / 2L TL's¹
- AHG backstops \$200M of new money to URS for loans senior to URS debt issued in exchange
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- URS distributes debt proceeds to the restricted group
- The Company uses debt proceeds to purchase AHG loans
- Company uses excess debt proceeds to opportunistically purchase 1L / 2L TL's in the open market or subsequent transactions

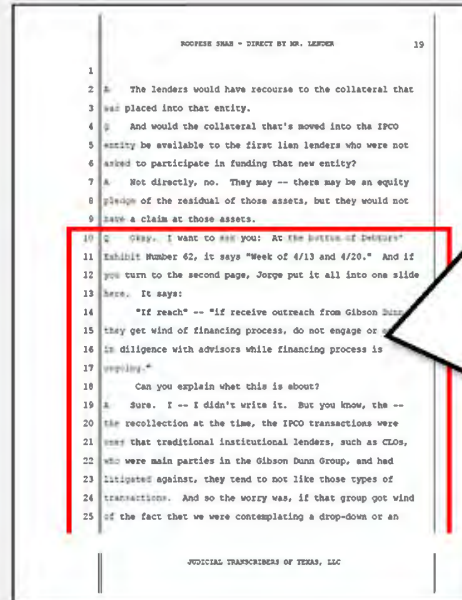


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Solicitation Began in April 2020



32



So the goal was to either not engage with them in any way or parallel process their diligence, but again, all with the view towards consummating the IPCO transaction.

April 24, 2020 Gibson Dunn Letter

Case 23-90020 Document 862-31 *SEALED* Filed in TXSB on 05/12/23 Page 3 of 8

GIBSON DUNN

Gibson, Dunn & Crutcher LLP

200 Park Avenue
New York, NY 10022-6503
Tel 212 345 4000
www.gibsondunn.comEmail: J. Greenberg
Direct +1 212 381 5288
JGreenberg@gibsondunn.com

April 24, 2020

VIA ELECTRONIC MAIL

Ray C. Schrock, Esq.
Weil, Gotshal & Manges LLP
767 Fifth Avenue
New York, NY 10153Re: Sena Simmons Bedding, LLC - Secured Lender Group

Dear Ray:

We write to follow up on the letter that we delivered to Mr. Barry Canipe and Ms. Kristen McGuffey on April 7, 2020 on behalf of the Secured Lender Group (the "April 7th Letter"). While the Secured Lender Group understands and appreciates that the Company is likely dedicating extensive resources addressing numerous operational challenges resulting from the COVID-19 pandemic, we have yet to receive a response to the April 7th Letter.

Based on the latest available information, it appears likely that the brick-and-mortar retail channel on which the Company depends for much of its revenue will remain substantially closed in most markets for most if not all of the second quarter and possibly beyond. This development will continue to strain the Company's earning power and, as a result, accelerate the Company's cash burn. It is our understanding that the Company has retained a financial advisor to assist the Company in evaluating and managing its liquidity. The Secured Lender Group is supportive of this measure and would greatly appreciate an update from the Company and its financial advisor with respect to the Company's current liquidity position, cash burn, and liquidity forecast.

As you no doubt are aware, given the inherent uncertainty of the current situation and the continued closures across the retail channel, it is critical that the Company maintain adequate liquidity. We have heard, but not confirmed, that third parties have expressed interest in providing debt capital to the Company to shore up its liquidity resources. Based on the current state of the capital markets and the Company's specific capital structure, we would expect any third-party financing to be based on a predatory pricing structure and require onerous terms. As we indicated in the April 7th Letter, the Secured Lender Group enjoys a longstanding familiarity with the Company, maintains the largest and senior-most position in the Company's capital structure, and has the exclusive power to amend the First Lien Credit Agreement, which means it is in the unique position to quickly and seamlessly unlock financing solutions for the Company such as a priming credit facility, which would likely be based on less expensive pricing than any third-party financing available to the Company.

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Beijing • Brussels • Canary City • Dallas • Denver • Frankfurt • Hong Kong • Houston • London • Los Angeles • Mumbai
New York • Orange County • Palo Alto • Paris • San Francisco • São Paulo • Singapore • Washington, D.C.

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SSB_ADVERSARY00042795Debtors' Exhibit No. 87
Page 3 of 8

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April 24, 2020 Gibson Dunn Letter

Case 23-90020 Document 862-31 *SEALED* Filed in TXSB on 05/12/23 Page 3 of 8

GIBSON DUNN

Gibson, Dunn & Crutcher LLP
200 Park Avenue
New York, NY 10022-3090
Tel 212.344.4000
www.gibsondunn.com
East / New York
David +1 212 341 6266
ddawson@gibsondunn.com

April 24, 2020

VIA ELECTRONIC MAIL

Ray C. Schrock, Esq.
Wol, Goshal & Manges LLP
767 Fifth Avenue
New York, NY 10153

Re: Sena Simmons Bedding, LLC – Secured Lender Group

Dear Ray:

We write to follow up on the letter that we delivered to Mr. Barry Canipe and Ms. Kristen McCaffrey on April 7, 2020 on behalf of the Secured Lender Group (the “April 7th Letter”). While the Secured Lender Group understands and appreciates that the Company is likely dedicating extensive resources addressing numerous operational challenges resulting from the COVID-19 pandemic, we have yet to receive a response to the April 7th Letter.

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As you no doubt are aware, given the inherent uncertainty of the current situation and the continued closures across the retail channel, it is critical that the Company maintain adequate liquidity. We have heard, but not confirmed, that third parties have expressed interest in providing debt capital to the Company to shore up its liquidity resources. Based on the current state of the capital markets and the Company’s specific capital structure, we would expect any third-party financing to be based on a predatory pricing structure and require onerous terms. As we indicated in the April 7th Letter, the Secured Lender Group enjoys a longstanding familiarity with the Company, maintains the largest and senior-most position in the Company’s capital structure, and has the exclusive power to amend the First Lien Credit Agreement, which means it is in the unique position to quickly and seamlessly unlock financing solutions for the Company such as a priming credit facility, which would likely be based on less expensive pricing than any third-party financing available to the Company.

Beijing • Buenos Aires • Century City • Dallas • Denver • Dubai • Frankfurt • Hong Kong • Houston • London • Los Angeles • Mexico City • Miami • New York • Paris • San Francisco • Sao Paulo • Singapore • Washington, D.C.

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Debtors' Exhibit No. 87
Page 3 of 8

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SSB_ADVERSARY00042795

Case 23-90020 Document 862-31 *SEALED* Filed in TXSB on 05/12/23 Page 7 of 8

Highly Preliminary Draft / Subject to Material Revision / FRE 408 / Prepared at the Direction of Counsel

Illustrative Super Priority Financing Terms

Illustrative Terms	
Facility Size	▪ [TBD] – subject to satisfactory legal and business diligence review, including, without limitation, with respect to sizing of the facility and the verified cash flow needs of business
Structure	▪ Super Priority Delayed Draw Term Loan (“ <u>Priority Term Facility</u> ”, and the loans thereunder, “ <u>Priority Term Loans</u> ”); draws subject to satisfaction of conditions precedent acceptable to the Ad Hoc Group
Borrower/Guarantors	▪ Same as under First Lien Term Loan Credit Agreement
Administrative Agent	▪ Same as under First Lien Term Loan Credit Agreement
Lenders	▪ Backstopped by certain members of the Ad Hoc Group, each on a pro rata basis (the “ <u>Backstop Group</u> ”), but available to all existing First Lien Term Lenders pro rata (collectively, the “ <u>Priority Term Lenders</u> ”)
Premium Payments	▪ Backstop Payment: [TBD]% of principal amount, payable in cash at closing – only provided to Backstop Group ▪ Upfront Payment: [TBD]% of principal amount, payable in cash at closing – provided to all Priority Term Lenders
Interest	▪ L + [] per annum (subject to 1.0% LIBOR floor); payable monthly
Amortization	▪ [TBD]
Call Protection	▪ [TBD] months: Non-callable (i.e., make-whole for the first [TBD] months)
Maturity	▪ Earlier of (i) [August 10, 2023 (90 days inside maturity of First Lien Term Loan)] and (ii) acceleration
Priority/Collateral	▪ Senior in priority to the First Lien Term Loans on the Term Loan Priority Collateral and the ABL Priority Collateral ▪ First-priority lien on all currently encumbered collateral, subject only to the ABL Lenders’ interest in ABL Priority Collateral ▪ Other collateral enhancements TBD

CENTERVIEW PARTNERS
GIBSON DUNN

2

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Debtors' Exhibit No. 87
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SSB_LCM_00042799
SSB_ADVERSARY00042799



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Needed a Competitive Proposal

Case 23-90020 Document 863-42 *SEALED* Filed in TXSB on 05/12/23 Page 2 of 6

Redacted – Privileged

To your questions from before:

Kevin, the other proposals are coming from other existing lenders. You may recall that there was another smaller group of three lenders led by Garret that also signed an NDA and have been talking to the Company. We also know that Ratings (who is the largest cross over lender) signed an NDA. Both Garret and Ratings were discussing facility management transactions with the Company prior to Covid, so it is likely that both have provided the Company with proposals that include new money for liquidity plus a discounted exchange. Neither group is large enough to be able to put in place a super priority facility and so they would be looking at a drop down of assets.

Redacted – Privileged

From: Luthers, David <David.Luthers@invesco.com>

Sent: Saturday, May 23, 2020 2:30 PM

To: Egan, Kevin T <Kevin.Egan@invesco.com>; Yarrow, Philip <Philip.Yarrow@invesco.com>; *NY- HYL PMS <*NY-HYLPMS@invesco.com>

Subject: RE: Serta Simmons Bedding, LLC - Need any IC Feedback on Potentially Putting Together a New Money/Discounted 1L Exchange into Priming Facility Proposal

Presumably the Superpriority will be very well covered and should be an attractive place of paper and like Serta, I think the new money plus the roll up is the best way of protecting our collateral. I also agree with you that we should try to structure this so that our group is the only one providing new money and the exchange.

Redacted – Privileged

From: Egan, Kevin T <Kevin.Egan@invesco.com>

Sent: Saturday, May 23, 2020 1:20 PM

To: Yarrow, Philip <Philip.Yarrow@invesco.com>; *NY- HYL PMS <*NY-HYLPMS@invesco.com>

Subject: Re: Serta Simmons Bedding, LLC - Need any IC Feedback on Potentially Putting Together a New Money/Discounted 1L Exchange into Priming Facility Proposal

Phil:

I agree that we have to put a competitive proposal on the table. We can ill afford to have that magnitude of assets - in particular the IP- dropped from our borrower. I was not clear from your note whether the competitive offer was coming from another Group of existing lenders- and if so - do we know the composition of that group- or if These were new money lenders. It doesn't change our need to provide a counterproposal- I was just interested in what other parties see value here.

Thanks,
Kevin

Name: Serta Simmons Bedding, LLC

HIGHLY CONFIDENTIAL – ATTORNEYS' EYES ONLY
Highly Confidential

Debtors' Exhibit No. 149
Page 2 of 6

LCMvSerta_Invesco_0001594
SSB_ADVERSARY00153529

From: Egan, Kevin T <Kevin.Egan@invesco.com>

Sent: Saturday, May 23, 2020 1:20 PM

To: Yarrow, Philip <Philip.Yarrow@invesco.com>; *NY- HYL PMS <*NY-HYLPMS@invesco.com>

Subject: Re: Serta Simmons Bedding, LLC - Need any IC Feedback on Potentially Putting Together a New Money/Discounted 1L Exchange into Priming Facility Proposal

Phil:

I agree that we have to put a competitive proposal on the table. We can ill afford to have that magnitude of assets - in particular the IP- dropped from our borrower. I was not clear from your note whether the competitive offer was coming from another Group of existing lenders- and if so - do we know the composition of that group- or if These were new money lenders. It doesn't change our need to provide a counterproposal- I was just interested in what other parties see value here.

Thanks,
Kevin

Case 23-09001 Document 310 Filed in TXSB on 05/25/23 Page 42 of 124

Focused on AG Group Proposal

Case 23-90020 Document 863-4 *SEALED* Filed in TXSB on 05/12/23 Page 1 of 12

Message
From: Shah, Roopesh [Roopesh.Shah@Evercore.com]
Sent: 5/5/2020 11:31:27 AM
To: Banks, Brent [Brent.Banks@Evercore.com]
CC: Augustiak, Adam [Adam.Augusiak@evercore.com]; Dalal, Ankit [Ankit.Dalal@evercore.com]; Li, Alex [Alex.Li@Evercore.com]
Subject: Re: [EXTERNAL] Serta

We need to see where Fortress is.

Would pair BT up with Fortress if F needs a partner, else pair them with Oaktree and possibly Silverpoint to round it out. Yes there will be lowest common denominator risk but maybe you can use the tighter terms (BT) to push the more expensive guys (Oaktree) somewhere better. Ultimately this is about getting to the required quantum - I bet terms will be similar amongst everyone at the end of the day.

We should focus on AG as they continue to be our best horse. And maybe Oaktree can eventually pair with them.

We need DP to move more quickly. Can we push them to be done by early next week?

Will DP get to a liquidation appraisal that works for BT?

Roopesh Shah
Senior Managing Director
EVERCORE
55 East 52nd Street
New York, NY 10055
Office: 212-336-6631 | Cell: 917-747-6649
Email: roopesh.shah@evercore.com

On May 5, 2020, at 5:58 AM, Banks, Brent <Brent.Banks@evercore.com> wrote:

Oaktree is only willing to do \$100mm... they requested to partner with AG
Ken has always been of the mind that a number of these guys get brought together at the very end

If you partner BT up with an Oaktree, don't you suffer from a lowest common denominator issue? E.g. they move to Oaktree terms

Would seem more natural to partner BT with Fortress... but haven't heard Fortress say they need more money

We also don't know where Barings / Cantorbridge come out on this.

To me seems like we are supposed to get feedback from everyone on this round... and then make the decision to pair people up. We haven't set a deadline for feedback, D&P maybe comes back mid next week... when do we want to push people towards?

From: Shah, Roopesh
Sent: Monday, May 4, 2020 9:57 PM
To: Augustiak, Adam

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Confidential

EVERCORE-SSB00012250
SSB_ADVERSARY00123618

Debtors' Exhibit No. 111
Page 1 of 12

Message

From: Shah, Roopesh [Roopesh.Shah@Evercore.com]
Sent: 5/5/2020 11:31:27 AM
To: Banks, Brent [Brent.Banks@Evercore.com]
CC: Augustiak, Adam [Adam.Augusiak@evercore.com]; Dalal, Ankit [Ankit.Dalal@evercore.com]; Li, Alex [Alex.Li@Evercore.com]
Subject: Re: [EXTERNAL] Serta

We need to see where Fortress is.

Would pair BT up with Fortress if F needs a partner, else pair them with Oaktree and possibly Silverpoint to round it out. Yes there will be lowest common denominator risk but maybe you can use the tighter terms (BT) to push the more expensive guys (Oaktree) somewhere better. Ultimately this is about getting to the required quantum - I bet terms will be similar amongst everyone at the end of the day.

We should focus on AG as they continue to be our best horse. And maybe Oaktree can eventually pair with them.

We need DP to move more quickly. Can we push them to be done by early next week?

Will DP get to a liquidation appraisal that works for BT?



Case 23-09001 Document 310 Filed in TXSB on 05/25/23 Page 43 of 124

Focused on AG Group Proposal



Roopesh Shah

1	
IN THE UNITED STATES BANKRUPTCY COURT	
FOR THE SOUTHERN DISTRICT OF TEXAS	
HOUSTON DIVISION	
IN RE:	CASE NO. 23-09000-11
SEPTA FINNORS RECEIVING, LLC,	JOSEPH A. HENNINGER
ET AL,	HOUSTON, TEXAS
	RECEIVED
FILED:	MAY 15, 2023
	1:01 P.M. TO 6:00 P.M.
DEPT. CLERK:	
SEPTA FINNORS RECEIVING, LLC,	CASE NO. 23-09000-11
ET AL,	JOSEPH A. HENNINGER
	HOUSTON, TEXAS
VS:	RECEIVED
AS CENTRE STREET PARTNERSHIP,	MAY 15, 2023
ET AL,	1:01 P.M. TO 6:00 P.M.
CONFIDENTIAL DAY ONE -- AFTERNOON SESSION (VIA ROOM)	
REFUSE THE HONORABLE DAVID R. JONES	
UNITED STATES BANKRUPTCY JUDGE	
APPEARANCES:	
COURTROOM DEPUTY: VERANA PORTILLO	
(Recorded via CourtSpeak)	
TRANSCRIPTION SERVICE BY:	
JUDICIAL TRANSCRIPTERS OF TEXAS, LLC	
575 KILGORE BLVD., #140	
HOUSTON, TX 77078	
(512) 779-2213	
www.judicialtranscribers.com	
Proceedings recorded by electronic sound recording;	
transcript produced by transcription service.	
JUDICIAL TRANSCRIPTERS OF TEXAS, LLC	

ROOPESH SHAH - DIRECT BY MR. LENDER 21

1 "Competitive group." Is that okay?

2 A Okay.

3 Q Great.

4 Let's take a look at our next exhibit, which is, for

5 the Record, Document 863-4, Debtors' Exhibit Number 111.

6 Is the top email in the chain an email that you wrote

7 and sent to Mr. Banks, copying others at Evercore, dated

8 May 5th, 2020?

9 A It is.

10 MR. LENDER: I'd like to move Debtors' Exhibit

11 Number 111 into evidence.

12 THE COURT: Any objection?

13 (No verbal response)

14 THE COURT: It's admitted.

15 (Exhibit 111, ECF 863-4 received in evidence)

16 BY MR. LENDER:

17 Q In the third paragraph, you wrote:

18 "We should focus on Angelo Gordon, as they continue to

19 be our best horse."

20 What did you mean by that?

21 A Well, at the time, just that. The Angelo

22 was our best horse. They had sent a proposal

23 company, we were negotiating that proposal. They were

24 furthest ahead and had the most developed proposal. So,

25 based on the competitive process to that date, while we had

JUDICIAL TRANSCRIPTERS OF TEXAS, LLC

17 Q In the third paragraph, you wrote:

18 "We should focus on Angelo Gordon, as they continue to

19 be our best horse."

20 What did you mean by that?

21 A Well, at the time, just that. The Angelo Gordon Group

22 was our best horse. They had sent a proposal into the

23 company, we were negotiating that proposal. They were

24 furthest ahead and had the most developed proposal. So,

25 based on the competitive process to that date, while we had

1 a lot of other parties participating, the view at the time

2 was the Angelo Gordon Group was the best horse.



May 22, 2020 Finance Committee Meeting

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**FINAL
MINUTES OF THE
FINANCE COMMITTEE
OF THE
BOARD OF MANAGERS
OF
DAWN INTERMEDIATE, LLC**

May 22, 2020

A meeting of the Finance Committee of the Board of Managers (the "Committee") of Dawn Intermediate, LLC (the "Company") was held telephonically on Friday, May 22, 2020.

The following Committee members were present for all or a portion of the meeting:

Jean Ellison
Harvey Tepner

Chief Executive Officer David Swift was also present for the meeting. Also present by invitation for all or portions of the meeting were the following:

Barry Canipe – Executive Vice President, Chief Financial Officer, Treasurer and Assistant Secretary, the Company;

Kristen McGuffey – Executive Vice President, General Counsel and Secretary, the Company;

Ray Schrock – Partner, Weil, Gotshal & Manges LLP ("Weil");
Alex Welch – Associate, Weil;

Raopesh Shah – Senior Managing Director, Evercore Inc. ("Evercore");
Brent Banks – Managing Director, Evercore; and

Armen Emritian – Senior Managing Director, FTI Consulting, Inc. ("FTI").

The meeting was called to order. All Committee members identified as well as the guests above were present at the beginning of the meeting.

1. Lender Engagement

As the first order of business, Mr. Banks, with reference to a presentation which appears as Exhibit A (the "Presentation"), updated the Committee on revised term sheets which had been provided to the Angelo Gordon, Barings and other potential lender groups, and the ongoing diligence process with these groups. A discussion ensued and questions were asked and answered.

Next, Mr. Banks updated the Committee on the status of the diligence process with the Gibson Dunn lender group. A discussion ensued and questions were asked and answered.

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Lender Outreach

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IPCo Financing Lender Outreach Summary

#	Lender Name	Contacted?	NDA Sent?	NDA Executed?	Lender Pres Sent?	VDR Access?	Current Blowout?	Sent Term Sheet?	Recent Lender Correspondence
1L Focused Group:									
1.	Angelo Gordon / Apollo / Gamut	✓	✓	✓	✓	✓	5/28/2020	✓	5/20: EVR/WGM sent term sheet counter proposal 5/21-5/22: EVR/WGM calls with PJT/Paul Weise to discuss counter
2.	Oaktree	✓	✓	✓	✓	✓	5/29/2020	✓	5/20: EVR/WGM sent term sheet counter proposal 5/21: EVR call with Oaktree to discuss counter
2L Focused Group:									
1.	TSSP	✓	✓	✓	✓	✓	5/29/2020	✓	5/20: EVR/WGM sent term sheet counter proposal 5/22: EVR call with TSSP to discuss counter EVR to vet holdings vs. participations; waiting on further discussions with TSSP on partnering
2.	Monarch								
Cross-holder Group:									
1.	CSAM	✓							REDACTED – PRIVILEGED
2.	Barings	✓	✓	✓	✓	✓	5/29/2020	✓	
3.	GDC / Centerview X-Holder Group	✓	✓						
Third Party Lenders:									
1.	Fortress	✓	✓	✓	✓	✓	N/A	✓	5/20: EVR/WGM sent term sheet counter proposal 5/21: EVR call with Fortress to discuss counter
2.	Blue Torch	✓	✓	✓	✓	✓	N/A	✓	5/20: EVR/WGM sent term sheet counter proposal 5/21: EVR call with Blue Torch to discuss counter
3.	Charlesbank	✓	✓	✓	✓	✓	N/A	✓	5/20: EVR/WGM sent term sheet counter proposal 5/21: EVR call with Charlesbank to discuss counter
4.	Centerbridge	✓	✓	✓	✓	✓	N/A		5/8: Call with EVR to discuss transaction and ask for TS; no further follow up from Centerbridge
5.	Silver Point	✓	✓	✓	✓	✓	N/A		4/24: Less enthusiastic about the opportunity; cannot lead, but may do ~\$40mm w/o Serie and ~\$60-80mm with Serie, in conjunction with someone else
Passed on Opportunity:									
1.	HPS	✓	✓	✓	✓	✓	N/A		4/24: Decided to pass on the opportunity
2.	PIMCO	✓	✓	✓	✓	✓	N/A		4/30: Proposal never submitted as of last call with EVR
Total		13	12	11	11	11	N/A	7	

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Lender Outreach

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Angelo Gordon Group's IPCo Financing Term Sheet (Bid / Ask)

	New Money Financing	New Money Financing Proposed Counter
Latest TS Date	■ 5/4/2020	■ 5/12/2020
Borrower	■ Newly-formed non-guarantor restricted subsidiary	■ Same
Guarantor	■ Immediate parent of Borrower, also a newly-formed non-guarantor restricted subsidiary	■ None
Amount	■ \$285mm new 1L TL ► \$200mm new money plus \$100mm of existing 1L TL exchanged at an exchange ratio of 85%	■ \$285mm new 1L TL ► \$200mm new money plus \$148mm of existing 1L TL exchanged at an exchange ratio of 57.5%
Collateral	■ 1L on Borrower equity and all assets, including: (i) Simmons and Tuft & Needle ("T&N") IP, (ii) [TBD%] of outstanding equity in Serta, Inc., (iii) Simmons' 3rd party licensing revenue, and (iv) real estate, facilities and equipment ■ Maximum loan-to-value [TBD%]	■ 1L on Borrower equity and assets, including (i) certain Simmons / T&N trademarks, including associated goodwill, patents and domain names related to the manufacture, marketing and sale of Simmons, Beautyrest and Tuft & Needle products, including royalty streams associated with certain third-party licenses, (ii) intercompany license between Borrower and SSB, (iii) pledge of 82% of Serta, Inc. equity (excl. AI Dream), and (iv) pledge of the equity of the guarantor under the Unrestricted Subsidiary facility ■ Same
Pricing	■ L + 700 cash pay plus 700 PIK ■ 1.00% LIBOR floor	■ L + 700 cash pay; 300 PIK on new money portion of new 1L TL ■ L + 400 cash pay; 400 PIK on exchange debt portion of new 1L TL ■ Same
OID / Fees	■ Upfront Fee: 4% on new money proceeds (\$8mm)	■ Upfront Fee: 2% on new money proceeds (\$4mm)
Tenor	■ May 8 th , 2024	■ November 8 th , 2024
Amortization	■ None	■ Same
Mandatory Prepayments	■ 100% of proceeds from (i) debt issuances after closing, (ii) asset sale proceeds, (iii) casualty and condemnation proceeds (iv) tax refunds, and (v) other extraordinary receipts	■ 100% of proceeds from debt issuances after closing
Prepayment Penalty	■ T+50bps make-whole premium prior to maturity	■ NC-1 / 104 / 102 on new money portion of new 1L TL ■ No prepayment penalty on exchange debt portion of new 1L TL
Financial Covenants	■ None	■ Same
Other	■ Borrower shall pay all advisor fees and expenses	■ Same

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Source: Investor Term Sheet

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Lender Outreach

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Barings IPCo Financing Term Sheet (Bid / Ask)

	IPCo Financing Proposal	IPCo Financing Proposed Counter
Latest TS Date	5/6/2020	5/12/2020
Borrower	Newly-formed unrestricted subsidiary ("IPCo")	Same
New Money Amount	New money \$[150-200]mm Term B-1 Loans ("Term B-1 Loans")	New money \$[200]mm Term B-1 Loans ("Term B-1 Loans")
Exchange Amount	<ul style="list-style-type: none"> \$[240-250]mm term B-2 Loans ("Term B-2 Loans") comprised of existing \$[190]mm 1L and \$[62]mm 2L TL held by Barings exchanged at [TBD] Implies a blended exchange ratio of ~90 assuming \$245mm Term B-2 Loans based on Barings's existing 1L and 2L holdings 	<ul style="list-style-type: none"> \$[138]mm term B-2 Loans ("Term B-2 Loans") comprised of existing \$[190]mm 1L TL and \$[62]mm 2L TL held by Barings exchanged at 57.5 and 35, respectively
Collateral	<ul style="list-style-type: none"> 1L on all equity interests in and assets of IPCo, including the IP assets, the license agreement between IPCo and SSB, any third party licensing agreements, bank accounts and any 1L and 2L Exchanged Loans held by the IPCo 	<ul style="list-style-type: none"> 1L on all equity interests in and assets of IPCo, including (i) certain Simmons / T&N trademarks, including associated goodwill, patents and domain names related to the manufacture, marketing and sale of Simmons, Beautyrest and Tuft & Needle products, including royalty streams associated with certain third-party licenses, (ii) license agreement between IPCo and SSB, (iii) third party licensing agreements, (iv) interco notes created from Term B-1 Loans proceeds, and (v) pledge of 82% interest in Serta, Inc. (or transfer of such share ownership)
Pricing	L + [500 - 700] cash	<ul style="list-style-type: none"> L + [600] cash / [200] PIK on Term B-1 Loans L + [400] cash / [300] PIK on Term B-2 Loans
OID / Fees	None	Same
Tenor	November 6 th , 2023	November 6 th , 2024
Amortization	1.0% per annum	1.0% per annum only on the Term B-1 Loans
Prepayments	Optional prepayments and mandatory prepayments, including 100% of excess cash flow	Optional prepayments and mandatory prepayments
Prepayment Penalty	Make-whole prepayment premium payable upon acceleration	<ul style="list-style-type: none"> NC1 / 104 / 102 on Term B-1 Loans; also payable on acceleration No prepayment penalty on Term B-2 Loans
Contingent Value Right	Terms TBD	Same
Financial Covenants	Minimum interest coverage ratio and debt to total asset ratio	Minimum interest coverage ratio
Negative Covenants	<ul style="list-style-type: none"> Customary for such facilities, including no restricted payments, no investments, no dispositions and no indebtedness or liens other than subordinated debt up to [a max debt / total asset ratio TBD] (an amount not to exceed, together with the IP Term Loan Facility, \$[700-750]mm) 	<ul style="list-style-type: none"> Up to \$[TBD]mm of pari passu indebtedness, subject to lender consent, and up to \$[TBD]mm of permitted junior lien indebtedness Permitted sale / disposition of SSB's stake in the China JV

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Source: Investor Term Sheets

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Lender Outreach

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Other IPCo Financing Term Sheet Summaries

		Fortress	TPG Sixth Street Partners
New Money	Latest TS Date	■ 5/11/2020 (revised to contemplate enhanced collateral package)	■ 5/8/2020 (revised to contemplate enhanced collateral package)
	Amount	■ \$200mm 1L TL	■ \$225mm 1L TL
	Collateral	■ 1L on all assets of IPCo, incl. Simmons and T&N IP and internal / external licensing agreements; pledge of IPCo stock, and guarantee from new Serta HoldCo secured by pledge of 82% of Serta, Inc. stock and manufacturing facilities ▶ Portion of IPCo 1L TL proceeds will finance interco note between IPCo and SSB, which will be pledged to provide additional credit support at IPCo ▶ Interco note to be pari passu with existing 1L TL	■ 1L on all assets of IPCo, incl. Simmons and T&N IP and internal / external licensing agreements; pledge of IPCo stock, mortgages on manufacturing facilities, and guarantee from new Serta HoldCo and NBC, or pledge of 82% of Serta, Inc. stock ▶ Portion of IPCo 1L TL proceeds will finance interco note between IPCo and SSB, which will be pledged to provide additional credit support at IPCo ▶ Interco note to be pari passu with existing 1L TL
	Pricing	■ L + 750 cash, + 250 PIK ■ 1.00% LIBOR floor ■ Default rate: 4.0%	■ LIBOR + 800 cash, + 300 PIK ■ 2% LIBOR floor
	OID / Fees	■ 96 OID	■ Closing Fee: 3% ■ Admin Fee: \$100K per annum ■ Expense Deposit: \$200K
	Tenor	■ November 8, 2024 (coterminous with existing 2L TL)	■ November 8, 2024 (coterminous with existing 2L TL) ■ Springing maturity to existing 1L TL maturity
	Amortization	■ None	■ 0% / 5% / 7.5% per annum, payable quarterly
	Prepayment Penalty	■ Non-Call 2 / 103 / 101 / Par	■ Non-Call Life

Source: Investor Term Sheets

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Other IPCo Financing Term Sheet Summaries

	Blue Torch Capital	Oaktree	Charlesbank	
Latest TS Date	■ 4/24/2020 (oral discussion 5/11/2020 reaffirming interest; no new terms)	■ 5/13/2020	■ 5/11/2020	
New Money	Amount	■ Orally indicated willingness to lend \$75mm in a minority position ► Previously contemplated forced liquidation approach; will keep open mind on structure / terms	■ Up to \$260mm of 1L TL ► \$60mm of IPCo 1L TL to consist of existing 1L TL purchased at par ► Oaktree willing to participate in up to \$[100]mm	■ \$160mm 1L TL
	Collateral	■ 1L on all assets of IPCo, incl. Simmons and Tuft & Needle ("T&N") IP and licensing agreements between IPCo and SSB	■ 1L on all equity and assets of IPCo, incl. Simmons and T&N IP (and related licenses) and the Intercompany Note between IPCo and SSB; pledge of 82% Serta, Inc. stock owned by NBC and owned real estate ► Portion of IPCo 1L TL to be used to purchase Intercompany Note between IPCo and SSB to provide additional credit support at IPCo ► Intercompany Note to be pari with existing 1L TL and subject to the same guarantees and security	■ 1L on IPCo assets; certain brands, intellectual property, manufacturing assets and other collateral contributed to IPCo, and all other assets of IPCo including notes receivable and cash ■ Pari passu 1L guarantee from entities guaranteeing existing SSB 1L TL ■ 2L on current ABL collateral
	Pricing	■ L + 850 ■ 1.75% LIBOR floor	■ 12% cash, 3% PIK ■ 2% cash default rate	■ LIBOR + 1475; LIBOR floor of 1.25% ► Up to 800 bps may be payable in PIK at borrower's option; monthly compounding ■ Default rate TBD
	OID / Fees	■ Upfront Fee: 3% ■ Agency Fee: \$250K per annum ■ Expense Deposit: TBD	■ Commitment Fee: 2%	■ 5% OID ■ Reimbursement for all fees and expenses
	Tenor	■ 3 years; springing maturity to existing or refinanced ABL	■ Earlier of (x) existing 1L TL maturity, and (z) November 8, 2023	■ March 1, 2023
	Amortization	■ 5% per annum, payable quarterly	■ None	■ None
	Prepayment Penalty	■ Months 1-18: None; months 19-24: 2%; months 25+: 4%	■ Non-Call Life	■ NC-1.5 / 103.5 / 100

Sources: Investor Term Sheets

Source: Investor Term Sheets

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Company Negotiated with More Than 70%

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Estimated Cost Basis of Key Existing 1L and 2L Lenders

(\$ in millions)

Lender	Amount Outstanding - 5/11		NDA		Cost Basis Estimate	
	1L	2L	1L	2L	1L	2L
Angelo	\$230	\$40			58	28
Gamut	158 ¹	-			52	-
Apolla	TBD ²	-			Assumed low	-
PJT / Paul Weiss	\$386	\$40	\$593	\$41	66	28
Barings	\$190	\$81	\$200	\$90	97	87
Credit Suisse	\$227	\$63			95	65
Eaton Vance	218	-			96	-
THL / First Eagle	77	-			90	-
Invesco	71	24			86	42
PGIM	53	-			95	-
MLX	47	-			97	-
Marble Point	27	7			95	78 ³
Blackrock	23	7			98	86
Symphony	12	13			97	74
Gibson Dunn / Centerview	\$765	\$114	\$741	\$113	94	63
Oaktree	\$59	\$1	NA	NA	88	78³
TPG	-	43	NA	NA	-	43

Source: Advent, SSB, UBS and Merrill

1. Holdings are on margin
2. Paul Weiss is reporting holdings
3. Estimate based on average trading price between initial allocation and first available tender bid as of 10/11/2016

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AG Group Proposal

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Angelo Gordon Group's IPCo Financing Term Sheet (Bid / Ask)

	New Money Financing	New Money Financing Proposed Counter
Latest TS Date	5/4/2020	5/12/2020
Borrower	Newly-formed non-guarantor restricted subsidiary	Same
Guarantor	Immediate parent of Borrower, also a newly-formed non-guarantor restricted subsidiary	None
Amount	<ul style="list-style-type: none"> \$285mm new 1L TL \$200mm new money plus \$100mm of existing 1L TL exchanged at an exchange ratio of 85% 	<ul style="list-style-type: none"> \$285mm new 1L TL \$200mm new money plus \$148mm of existing 1L TL exchanged at an exchange ratio of 57.5%
Collateral	<ul style="list-style-type: none"> 100% of Borrower equity and all assets, including: (i) Simmons and Tuft ("S&T") IP, (ii) [TBD%] of outstanding equity in Serta, Inc., (iii) third party licensing revenue, and (iv) real estate, equipment 	<ul style="list-style-type: none"> 1L on Borrower equity and assets, including (i) certain Simmons / T&N trademarks, including associated goodwill, patents and domain names related to the manufacture, marketing and sale of Simmons, Beautyrest and Tuft & Needle products, including royalty streams associated with certain third-party licenses, (ii) intercompany license between Borrower and SSB, (iii) pledge of 82% of Serta, Inc. equity (excl. AJ Dream), and (iv) pledge of the equity of the guarantor

Amount

- \$285mm new 1L TL
- \$200mm new money plus \$100mm of existing 1L TL exchanged at an exchange ratio of 85%

Tenor	May 8 th , 2024	November 8 th , 2024
Amortization	None	Same
Mandatory Prepayments	100% of proceeds from (i) debt issuances after closing, (ii) asset sale proceeds, (iii) casualty and condemnation proceeds (iv) tax refunds, and (v) other extraordinary receipts	100% of proceeds from debt issuances after closing
Prepayment Penalty	T+50bps make-whole premium prior to maturity	<ul style="list-style-type: none"> NC-1 / 104 / 102 on new money portion of new 1L TL No prepayment penalty on exchange debt portion of new 1L TL
Financial Covenants	None	Same
Other	Borrower shall pay all advisor fees and expenses	Same

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Source: Investor Term Sheets

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AG Group Proposal

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Angelo Gordon Group's IPCo Financing Term Sheet (Bid / Ask)

	Exchange Debt at UnSub	Exchange Debt at UnSub Proposed Counter
Latest TS Date	■ 5/4/2020	■ 5/12/2020
Borrower	■ Newly-formed unrestricted subsidiary	■ Same
Guarantor	■ Immediate parent of Borrower, also a newly-formed unrestricted subsidiary	■ Same
Amount	■ \$435mm new 1L TL ▶ \$493mm existing 1L TL exchanged at ratio of 85% and \$41mm existing 2L TL exchanged at ratio of 40%	■ \$270mm new 1L TL ▶ \$445mm existing 1L TL exchanged at ratio of 57.5% and \$41mm existing 2L TL exchanged at ratio of 35%
Collateral	■ On Borrower equity and all assets, including (i) acquired loans SSB, (ii) T&N business, (iii) [TBD%] of outstanding equity in [TBD%] and (iv) Simmons' 3 rd party licensing revenue	■ 1L on all Borrower equity and assets, including (i) certain Simmons / T&N trademarks, including associated goodwill, patents and domain names related to the manufacture, marketing and sale of Simmons, Beautyrest and Tuft & Needle products, including royalty streams associated with certain third-party licenses, and (ii) intercompany license between Borrower and SSB
Valuation	■ [TBD%]	■ Same
Amortization	■ None	■ Same
Mandatory Prepayments	■ 100% of proceeds from (i) debt issuances after closing, (ii) asset sale proceeds, (iii) casualty and condemnation proceeds (iv) tax refunds, and (v) other extraordinary receipts	■ 100% of proceeds from (i) debt issuances after closing, (ii) asset sale proceeds, and (iii) casualty and condemnation proceeds
Prepayment Penalty	■ T+50bps make-whole premium prior to maturity	■ None
Financial Covenants	■ None	■ Same
Other	■ Borrower shall pay all advisor fees and expenses ■ AG, Apollo and Gamut to receive pro rata rights to exchange existing 2L TL after closing at an exchange ratio of 40% for additional loans ■ Exchanged existing 1L / 2L loans to remain outstanding at Borrower	■ Borrower shall pay all advisor fees and expenses ■ Up to \$(TBD)mm of permitted junior indebtedness, subject to lender consent, and up to \$(TBD)mm of permitted junior lien indebtedness

Amount

- \$435mm new 1L TL
- ▶ \$493mm existing 1L TL exchanged at ratio of 85% and \$41mm existing 2L TL exchanged at ratio of 40%

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Source: Investor Term Sheets

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AG Group Proposal

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Angelo Gordon Group's IPCo Financing Term Sheet (Bid / Ask)

	New Money Financing	New Money Financing Proposed Counter
Latest TS Date	5/4/2020	5/12/2020
Borrower	Newly-formed non-guarantor restricted subsidiary	Same
Guarantor	Immediate parent of Borrower, also a newly-formed non-guarantor restricted subsidiary	None
Amount	<ul style="list-style-type: none"> \$285mm new 1L TL \$200mm new money plus \$100mm of existing 1L TL exchanged at an exchange ratio of 85% 	<ul style="list-style-type: none"> \$285mm new 1L TL \$200mm new money plus \$148mm of existing 1L TL exchanged at an exchange ratio of 57.5%
Collateral	<ul style="list-style-type: none"> 1L on Borrower equity and all assets, including: (i) Simmons and Tuft & Needle ("T&N") IP, (ii) [TBD%] of outstanding equity in Serta, Inc., (iii) Simmons' 3rd party licensing revenue, and (iv) real estate, facilities and equipment 	<ul style="list-style-type: none"> 1L on Borrower equity and assets, including (i) certain Simmons / T&N trademarks, including associated goodwill, patents and domain names related to the manufacture, marketing and sale of Simmons, Beautyrest and Tuft & Needle products, including royalty streams associated with certain third-party licenses, (ii) intercompany license between Borrower and SSB, (iii) pledge of 82% of Serta, Inc. equity (excl. AJ Dream), and (iv) pledge of the equity of the guarantor under the Unrestricted Subsidiary facility
	Maximum loan-to-value [TBD%]	Same

Collateral

- 1L on Borrower equity and all assets, including: (i) Simmons and Tuft & Needle ("T&N") IP, (ii) [TBD%] of outstanding equity in Serta, Inc., (iii) Simmons' 3rd party licensing revenue, and (iv) real estate, facilities and equipment

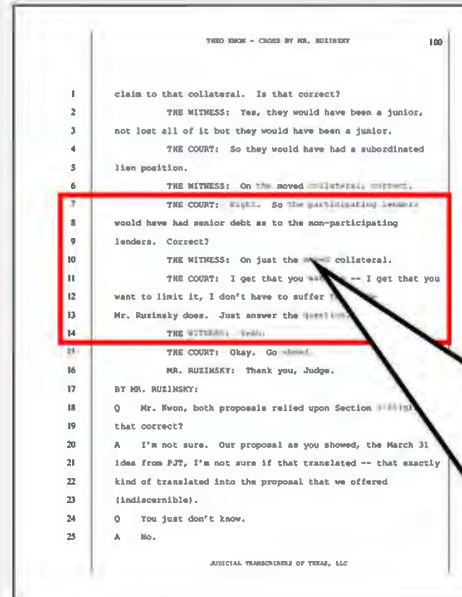
- Maximum loan-to-value [TBD%]

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Source: Investor Term Sheets

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7 THE COURT: Right. So the participating lenders
8 would have had senior debt as to the non-participating
9 lenders. Correct?

10 THE WITNESS: On just the moved collateral.

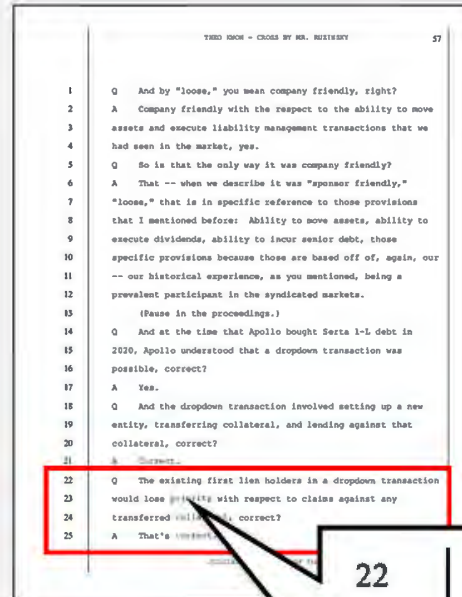
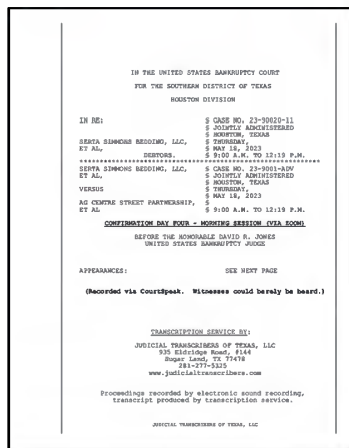
11 THE COURT: I get that you want to -- I get that you
12 want to limit it, I don't have to suffer that like
13 Mr. Ruzinsky does. Just answer the question.

14 THE WITNESS: Yeah.

AG Group Proposal Would Have Subordinated Lenders



Theodore Kwon

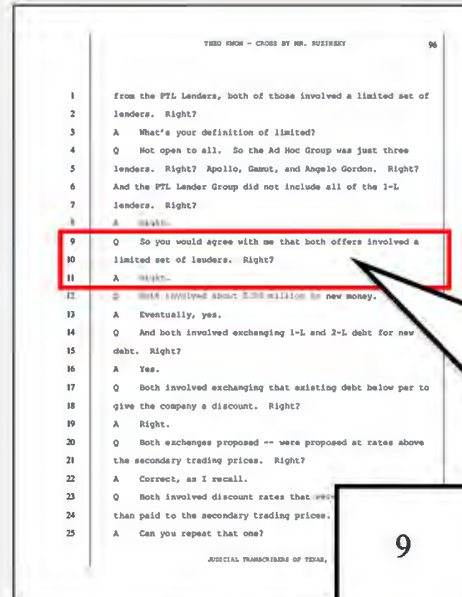


22 Q The existing first lien holders in a dropdown transaction

23 would lose priority with respect to claims against any

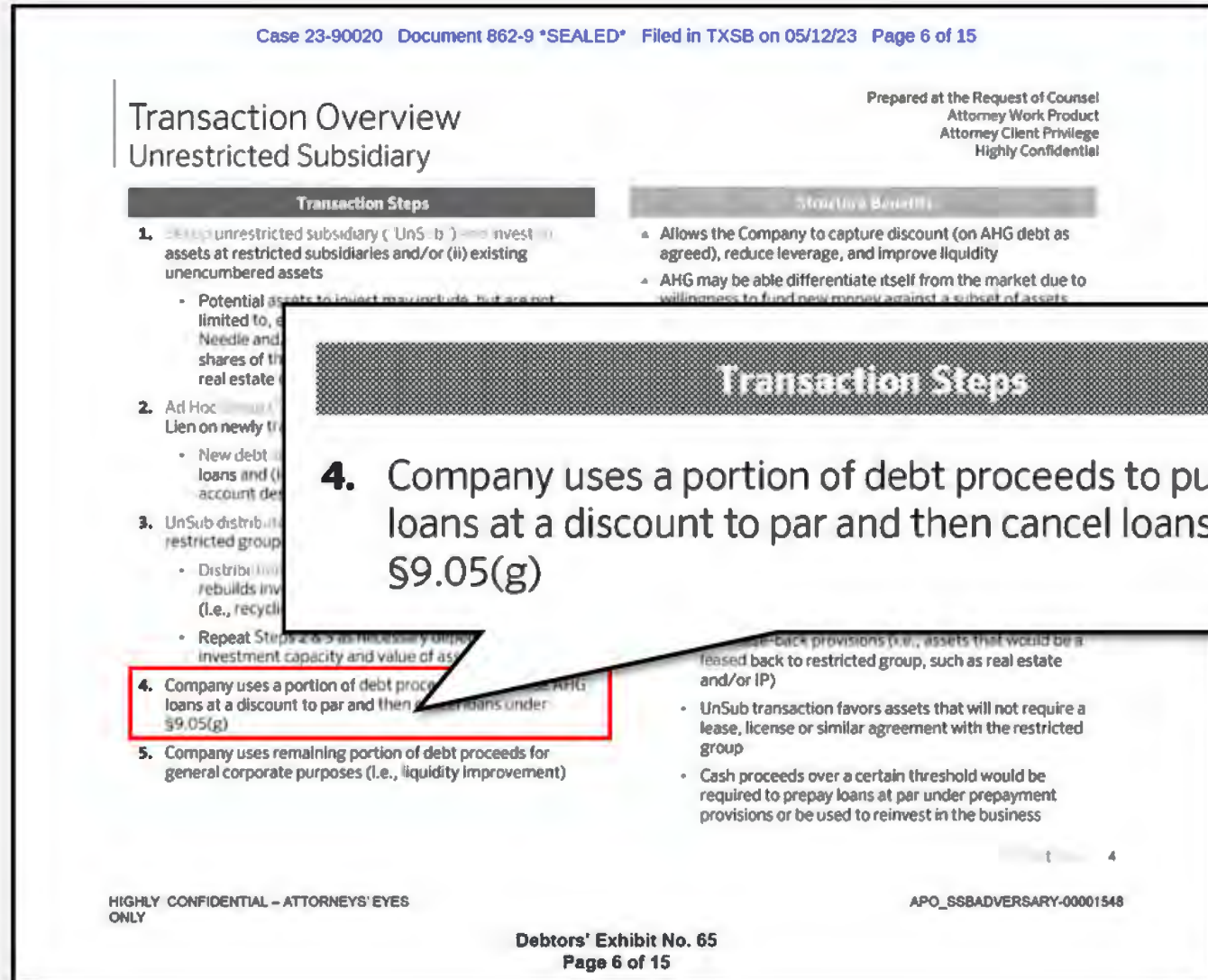
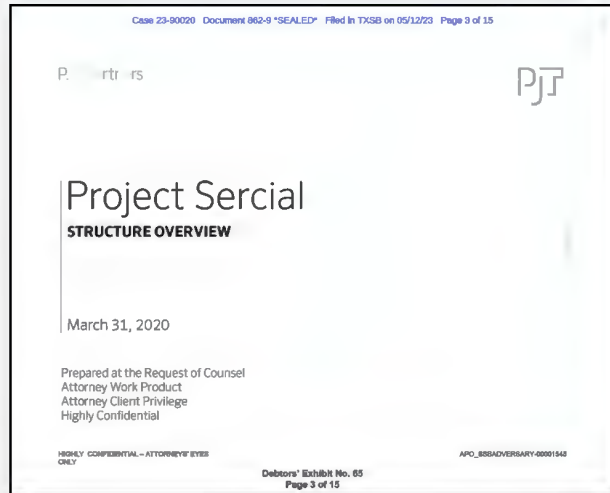
24 transferred collateral, correct?

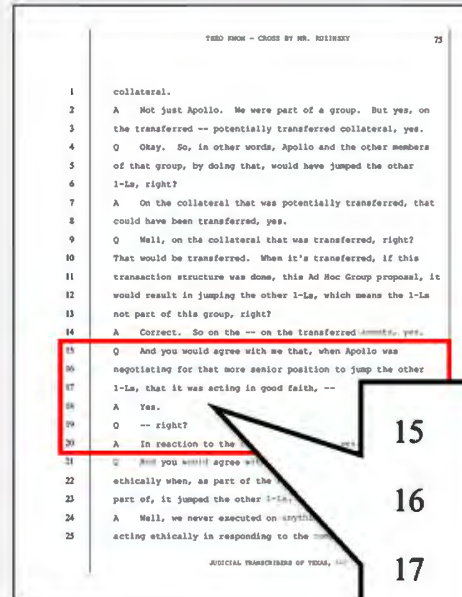
25 A That's correct.



9 Q So you would agree with me that both offers involved a
10 limited set of lenders. Right?
11 A Right.

AG Group Proposal Would Have Utilized Section 9.05(g)





20

A In reaction to the company's request, yes.

Angelo Gordon Believed Its Proposal Was In Good Faith

Case 23-90020 Document 859 Filed in TXSB on 05/12/23 Page 2 of 14
Case 23-09001 Document 110-2 Filed in TXSB on 03/24/23 Page 2 of 14

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

In re: Chapter 11
SERTA SIMMONS BEDDING, LLC, et al. Case No. 23-90020 (DRJ)

SERTA SIMMONS
Plaintiff
v.
ANG CENTRE S
Defendant
THIRD PARTY
v.
ANG FLOATED
Third Party
v.
OBJECT
PARTNERS
SERTA SIMMONS
CAPITAL

Procedure, Rule
Rules of the U.S.
District Court, District
of Texas, L.P., AG
L.L.C. (collectively
the "Rules")

Case 23-90020 Document 859 Filed in TXSB on 05/12/23 Page 11 of 14
Case 23-09001 Document 110-2 Filed in TXSB on 03/24/23 Page 11 of 14

Request No. 6: Admit that You believed you acted in good faith in proposing the Alternative Transaction.

Response to Request No. 6:

Angelo Gordon incorporates the foregoing General Objections as if fully set forth herein. Angelo Gordon objects to this Request on the grounds that it is neither relevant to the claims or defenses of any party nor proportional to the needs of the case, particularly to the extent that it seeks information about debt transactions other than the Transaction. Angelo Gordon further objects to this Request to the extent it seeks an admission as to a legal matter, as opposed to the truth of a matter relating to facts, the application of law to fact, or opinions about either, and thus exceeds the scope of Rule 36(a)(1) of the Federal Rules of Civil Procedure.

Subject to and without waiving the foregoing General and Specific Objections, Angelo Gordon admits that at all times it acted in good faith when negotiating the unconsummated Alternative Transaction with Angelo Gordon, Gamut, and Serta Simmons Bedding.

Dated: New York, New York
March 13, 2023

FRIEDMAN KAPLAN SEILER
ADELMAN & ROBBINS LLP
s/James D. Kelley
Lawrence S. Robbins*
Eric Seiler*
Anne E. Brummons*
James D. Kelley*
Blair R. Albom*
7 Times Square
New York, NY 10036-6516
(212) 833-1100
kbrummons@fkseiler.com
eseiler@fkseiler.com
abrommons@fkseiler.com
jkelley@fkseiler.com
blalbon@fkseiler.com

10

Debtors' Exhibit No. 301
Page 11 of 14

Request No. 6: Admit that You believed you acted in good faith in proposing the Alternative Transaction.

Response to Request No. 6:

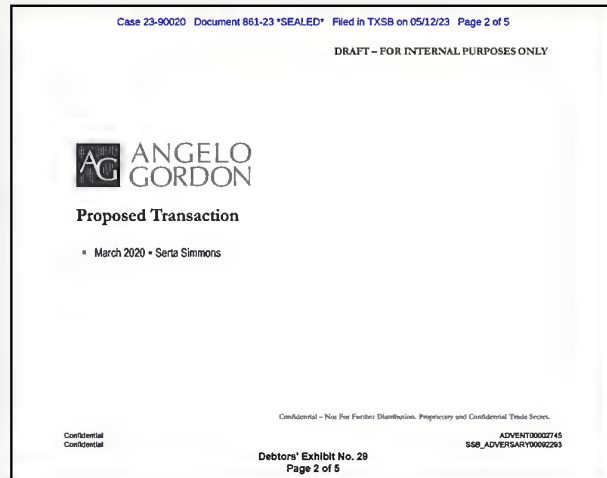
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Subject to and without waiving the foregoing General and Specific Objections,

Angelo Gordon admits that at all times it acted in good faith when negotiating the unconsummated Alternative Transaction with Angelo Gordon, Gamut, and Serta Simmons Bedding.



Angelo Gordon Proposal



SSB Proposed Transaction

Transaction Description

- Serta Simmons ("SSB" or "the Company") invests assets into an Unrestricted Subsidiary ("URS")
- Angelo Gordon ("AG") or an Ad Hoc Group ("AHG") funds new debt at the URS and the Company upstreams debt proceeds to the restricted group
- The Company uses proceeds to purchase loans of AHG and opportunistically purchase other loans

Key Assumptions

- New money: \$200M
- AHG 1L TL Amount: \$300M
- 1L Exchange price: 80 (~15 point premium to current market)
- AHG 2L TL Amount: \$200M
- 2L Exchange price: 50 (~20 point premium to current market)

Transaction Steps

Benefits

Transaction Steps

- Company uses excess debt proceeds to opportunistically purchase 1L / 2L TL's in the open market or subsequent transactions

- URS distributes debt proceeds to the restricted group
- The Company uses debt proceeds to purchase AHG
- Company uses excess debt proceeds to opportunistically purchase 1L / 2L TL's in the open market or subsequent transactions

and the role of execution of the initial exchange, the exchange part of the transaction can be separated into two steps: **Step 1:** AG alone exchanges its loans into the URS and commits to fund the full \$200M. The debt at URS would include baskets for additional debt/exchanges. **Step 2:** After assets have been moved, SSB offers other lenders the right to tender into exchange. This structure would create an incentive for other lenders to participate in the exchange as the assets have already been moved away from the existing loans.

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Debtors' Exhibit No. 29
Page 4 of 5

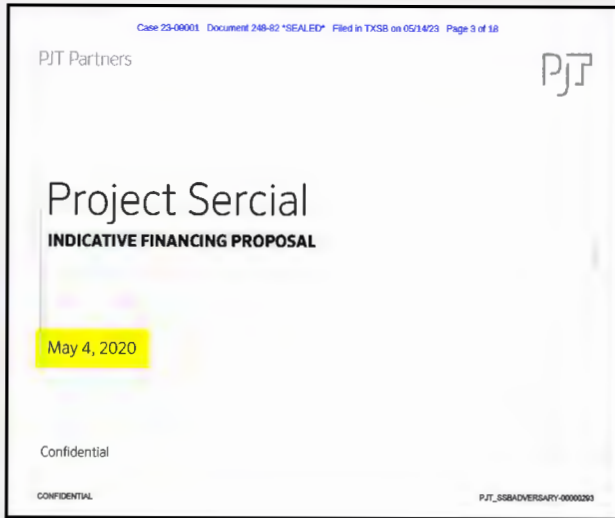
Proprietary and Confidential Trade Secret

2

ADVENT00002747
SSB_ADVERSARY00092295



Additional Basket Capacity



Case 23-09001 Document 248-82 *SEALED* Filed in TXSB on 05/14/23 Page 4 of 18

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Indicative Financing Proposal

STRUCTURE BENEFITS

- > Delivers substantial deleveraging on account of large existing 1L and 2L holdings exchange discount
- > Initial exchange debt structured to be cash neutral
- Further deleveraging and cash interest savings through 2L rollover

KEY TERMS

- > \$285 million of new non-guarantor debt
 - ~ \$200 million of new money
 - ~ \$100 million of 1L holdings exchanged at 85% L + 7.00% Cash / 7.00% PIK
- > \$435 million of new unrestricted subsidiary debt
 - ~ \$493 million of 1L holdings exchanged at 85%
 - ~ \$41 million of 2L holdings exchanged at 40%
 - ~ Basket for additional 2L exchange provides additional deleveraging and cash interest savings
 - ~ L + 4.50% Cash / 5.50% PIK

Exchange debt structured to be cash neutral

2

CONFIDENTIAL

PJT_SSBADVERSARY-00000294



Angelo Gordon Proposal



Roopesh Shah

1	IN THE UNITED STATES BANKRUPTCY COURT	1
2	FOR THE SOUTHERN DISTRICT OF TEXAS	
3	HOUSTON DIVISION	
4	IN RE: CASE NO. 23-09002-11	
5	SERTA FINANCIAL HOLDING, LLC, DEBTSOR	
6	ET AL. HOUSTON, TEXAS	
7	FILED: MAY 15, 2023	
8	FILED: 1:01 P.M. TO 6:00 P.M.	
9	RECEIVED: MAY 15, 2023	
10	FILED: MAY 15, 2023	
11	FILED: MAY 15, 2023	
12	FILED: MAY 15, 2023	
13	FILED: MAY 15, 2023	
14	FILED: MAY 15, 2023	
15	FILED: MAY 15, 2023	
16	FILED: MAY 15, 2023	
17	FILED: MAY 15, 2023	
18	FILED: MAY 15, 2023	
19	FILED: MAY 15, 2023	
20	FILED: MAY 15, 2023	
21	FILED: MAY 15, 2023	
22	FILED: MAY 15, 2023	
23	FILED: MAY 15, 2023	
24	FILED: MAY 15, 2023	
25	FILED: MAY 15, 2023	

1	PROPOSED PLAN - DIRECT BY MR. LEONARD	
2	Q And can you briefly describe the proposal that they	
3	made?	
4	A Their proposal was to set up an unrestricted subsidiary	
5	and transfer assets, including IP and equity of Serta, and	
6	at that subsidiary, Angelo Gordon would lend \$200 million	
7	for new money and they would exchange their debt into that	
8	subsidiary at the same time.	
9	Q Now, let's look at the last bullet under transaction	
10	steps; do you see where it says:	
11	"Company uses excess debt proceeds to opportunistically	
12	purchase 1-L/2-L term loans in the open market or subsequent	
13	transactions?"	
14	What did you understand that step of their	
15	about?	
16	A It was to use either the cash that they	
17	further exchange capacity to go out and repurchase other	
18	nonparticipants, participants away from Angelo Gordon	
19	at that time.	
20	Q And is this any different than what Serta did	
21	transaction was announced?	
22	A I think it's the same thing.	
23	Q During your negotiations with the DOJ Angelo Gordon	
24	Group, did they ever propose any structure other than an	
25	SPC structure?	
26	A Not that I'm aware of.	
27	JUDICIAL TRANSCRIPTERS OF TEXAS, LLC	

8 Q Now, let's look at the last bullet under transaction

9 steps; do you see where it says:

10 "Company uses excess debt proceeds to opportunistically

11 purchase 1-L/2-L term loans in the open market or subsequent

12 transactions?"

13 What did you understand that step of their proposal was

14 about?

15 A It was to use either the cash that they had put in or

16 further exchange capacity to go out and repurchase other

17 nonparticipants, participants away from Angelo Gordon at

18 that time.

19 Q And is this any different than what Serta did after the

20 transaction was announced?

21 A I think it's the same thing.

June 20, 2020 Finance Committee Meeting

Summary of Total Inbounds Received

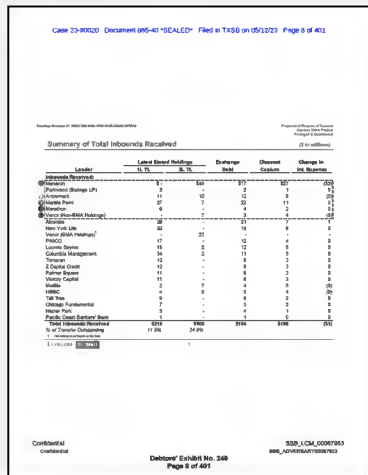
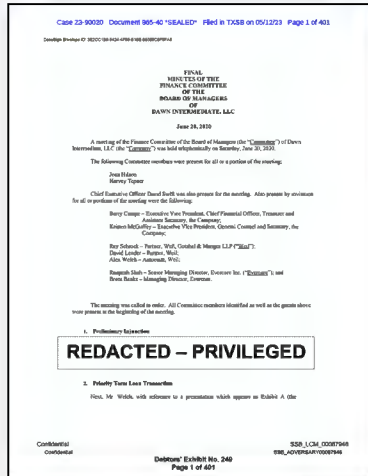
(\$ in millions)

	Lender	Latest Stated Holdings		Exchange Debt	Discount Capture	Change in Int. Expense
		1L TL	2L TL			
Inbounds Received:						
1	Monarch	\$ -	\$44	\$17	\$27	(\$3)
	Parkwood (Barings LP)	3	-	2	1	0
2	Arrowmark	11	10	12	9	(0)
3	Marble Point	27	7	22	11	0
4	Marathon	6	-	4	2	0
5	Venor (Non-SMA Holdings)	-	7	3	4	(0)
	Alcentra	28	-	21	7	1
	New York Life	22	-	16	6	0
	Venor (SMA Holdings) ¹	-	21	-	-	-
	PIMCO	17	-	12	4	0
	Loomis Sayles	15	2	12	5	0
	Columbia Management	14	2	11	5	0
	Trimaran	12	-	9	3	0
	Z Capital Credit	12	-	9	3	0
	Palmer Square	11	-	8	3	0
	Victory Capital	11	-	8	3	0
	Metlife	2	7	4	5	(0)
	HSBC	4	5	5	4	(0)
	Tall Tree	9	-	6	2	0
	Chicago Fundamental	7	-	5	2	0
	Napier Park	5	-	4	1	0
	Pacific Coast Bankers' Bank	1	-	1	0	0
Total Inbounds Received		\$218	\$105	\$194	\$108	(\$1)
% of Tranche Outstanding		11.5%	24.6%			

1. Not looking to participate at this time

EVERCORE Weill

3



June 20, 2020 Finance Committee Meeting

Transaction Participants and Proposed Additional Participants

(\$ in millions)

Summary of Current and Proposed Transaction Participants

Lender	Latest Stated Holdings		Exchange	Discount	Change in
	1L TL	2L TL	Debt	Capture	Int. Expense
TSA Participants:					
Eaton Vance	\$219	\$ -	\$162	\$57	\$4
CSAM	206	63	177	92	0
First Eagle	72	-	53	19	1
Invesco	67	24	59	32	(0)
PGIM	53	-	39	14	1
MJX	47	-	35	12	1
BlackRock	23	7	20	10	0
Symphony	12	13	14	11	(0)
Barings	190	82	173	100	(1)
Oaktree	59	-	44	15	1
TPG	1	43	17	26	(2)
Total Through TSA Part.	\$949	\$231	\$792	\$387	\$4
% of Tranche Outstanding	50.3%	54.0%			

Additional Participants:

1 Monarch	\$ -	\$44	\$17	\$27	(\$3)
Parkwood (Barings LP)	3	-	2	1	0
2 Arrowmark	11	10	12	0	(0)
Total Through Additional Part.					\$1
% of Tranche Outstanding					

Proposed Participants:

3 Marble Point					\$0
4 Marathon					0
5 Venor (Non-SMA Holdings)					(0)
Total Through Proposed Part.					\$1
% of Tranche Outstanding					

Total Exchange Capacity
(-) Exchanged Debt Through Proposed
Total Remaining Exchange Capacity

Source: TSA and NDA

EVERCORE

Well

Rationale for Proposed Participants

- 1 Largest 2L only TL holder (excluding TSA participants). Offers ~\$27mm of discount capture and ~\$3mm of interest savings
- 2 Large 1L and 2L TL crossholder; provides \$9mm of discount capture and is roughly interest breakeven
- 3 Large 1L and 2L TL crossholder; Provides \$11mm of discount capture and is roughly interest breakeven
- 4 Small but very sophisticated and vocal lender; utilizes only ~\$4mm of exchange capacity
- 5 2L only lender; provides ~\$4mm incremental discount capture and ~\$400K of interest savings

Rationale for Proposed Participants

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- 2 Large 1L and 2L TL crossholder; provides \$9mm of discount capture and is roughly interest breakeven
- 3 Large 1L and 2L TL crossholder; Provides \$11mm of discount capture and is roughly interest breakeven
- 4 Small but very sophisticated and vocal lender; utilizes only ~\$4mm of exchange capacity
- 5 2L only lender; provides ~\$4mm incremental discount capture and ~\$400K of interest savings



Defendants Abandon Subsequent Purchases Theory

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

IN RE: § CASE NO. 23-90020-11
§ JOINTLY ADMINISTERED
§ HOUSTON, TEXAS
SERTA SIMMONS REDDING, LLC, § MONDAY,
ET AL., § MAY 15, 2023
§ 9:30 A.M. TO 12:24 P.M.
DEBTORS. §
SERTA SIMMONS REDDING, LLC, § PAGE NO. 23-911-REV

71

1 And you're going to hear evidence that Advent, which
2 owned Serts, was the controlling shareholder and Mr. Prince,
3 they didn't really want to do a deal that involved Apollo
4 because they were competitors and they didn't want to have a
5 credit where Apollo had an interest. So and that of course is
6 part of the story behind the DQ. Apollo is viewed as someone
7 you could negotiate with, but we don't really want them at
8 all.

9 So you're going to see evidence that talks about the
10 role of Apollo, and I think what you'll conclude is,
11 respectfully, that we were only an option if the other option
12 fell apart. So we were the stalking horse to get the other
13 option more motivated, but we were only an other option if the

14 option fell apart. And there's going to be a lot of evidence
15 about who got to be in and who got to be out of it. I'm not
16 talking about subsequent purchases, those are fine. I'm
17 talking about who got included in the transaction that they
18 needed to get the 50.1 percent.

19 And so we're going to point to that as an improper
20 process, not the beginning, not through the April, the end of
21 April, but in May, the very end of May and the first of June,
22 and then we're going to show which provisions they tweaked to
23 make sure they got what they got, and there's some evidence --
24 we're going to show you improper communications with third
25 parties that I'll wait till we show them to talk about their

JUDICIAL TRANSCRIBERS OF TEXAS, LLC

14 option fell apart. And there's going to be a lot of evidence
15 about who got to be in and who got to be out of it. I'm not
16 talking about subsequent purchases, those are fine. I'm
17 talking about who got included in the transaction that they
18 needed to get the 50.1 percent.



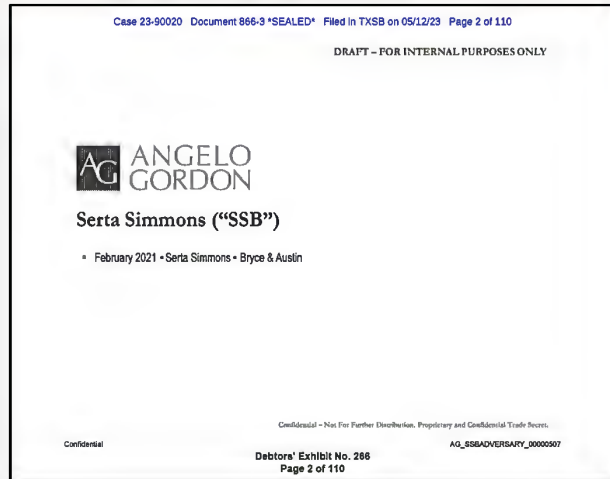
SSB Did Not Breach the Implied Covenant

- SSB entered into the 2020 Transaction because it was in financial trouble.
- SSB engaged in a good faith competitive process.
- **SSB's independent finance committee evaluated the various proposals and selected the best deal.**



- \$200M in new money
- Debt discount capture of ~\$400M
- Decreased total debt by ~\$200M
- Lower interest payments than alternative
- Did **NOT** require transfer of IP and/or royalty streams as collateral to PTL loans
- Did **NOT** strip any existing 1L Lenders of collateral
- Had support of more lenders
- Provided flexibility for future transactions

Angelo Gordon Admits Benefits of 2020 Transaction



Case 23-90020 Document 866-3 *SEALED* Filed in TXSB on 05/12/23 Page 24 of 110

June 2020 Transaction Summary

Key Terms

- Immediate benefits of the transaction for SSB include:
 - ~\$440M of debt reduction as a result of the FLSO exchange
 - Cash interest expense neutral on the FLSO exchange transaction
 - Liquidity with pro forma \$350M of cash on the balance sheet
 - Preservation of future deleveraging via additional exchanges and / or asset sales

Priority Term Loan will be on a pari passu basis and the existing 2L TL will be secured by previously unencumbered property and shall secure the existing 1L TL on pari passu

- Pledge of 100% of the equity of the debtor's wholly owned subsidiaries
- Pledge of the stock of the debtor's wholly owned subsidiaries (including interests related to AI Dream)

- Immediate benefits of the transaction for SSB include:
 - ~\$440M of debt reduction as a result of the FLSO exchange
 - Cash interest expense neutral on the FLSO exchange transaction
 - Liquidity with pro forma \$350M of cash on the balance sheet
 - Preservation of future deleveraging via additional exchanges and / or asset sales

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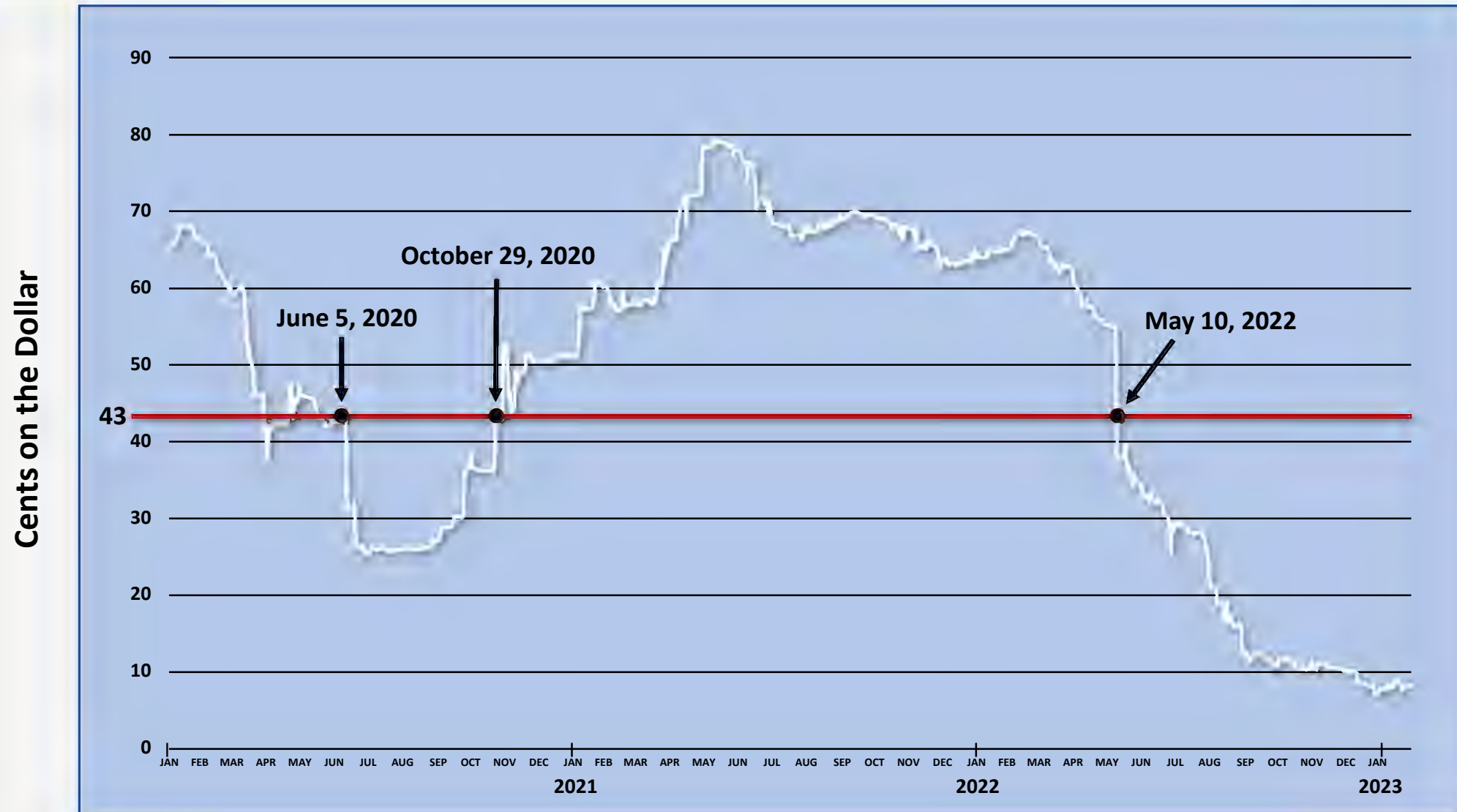
Debtors' Exhibit No. 266
Page 24 of 110

Proprietary and Confidential Trade Secret 22

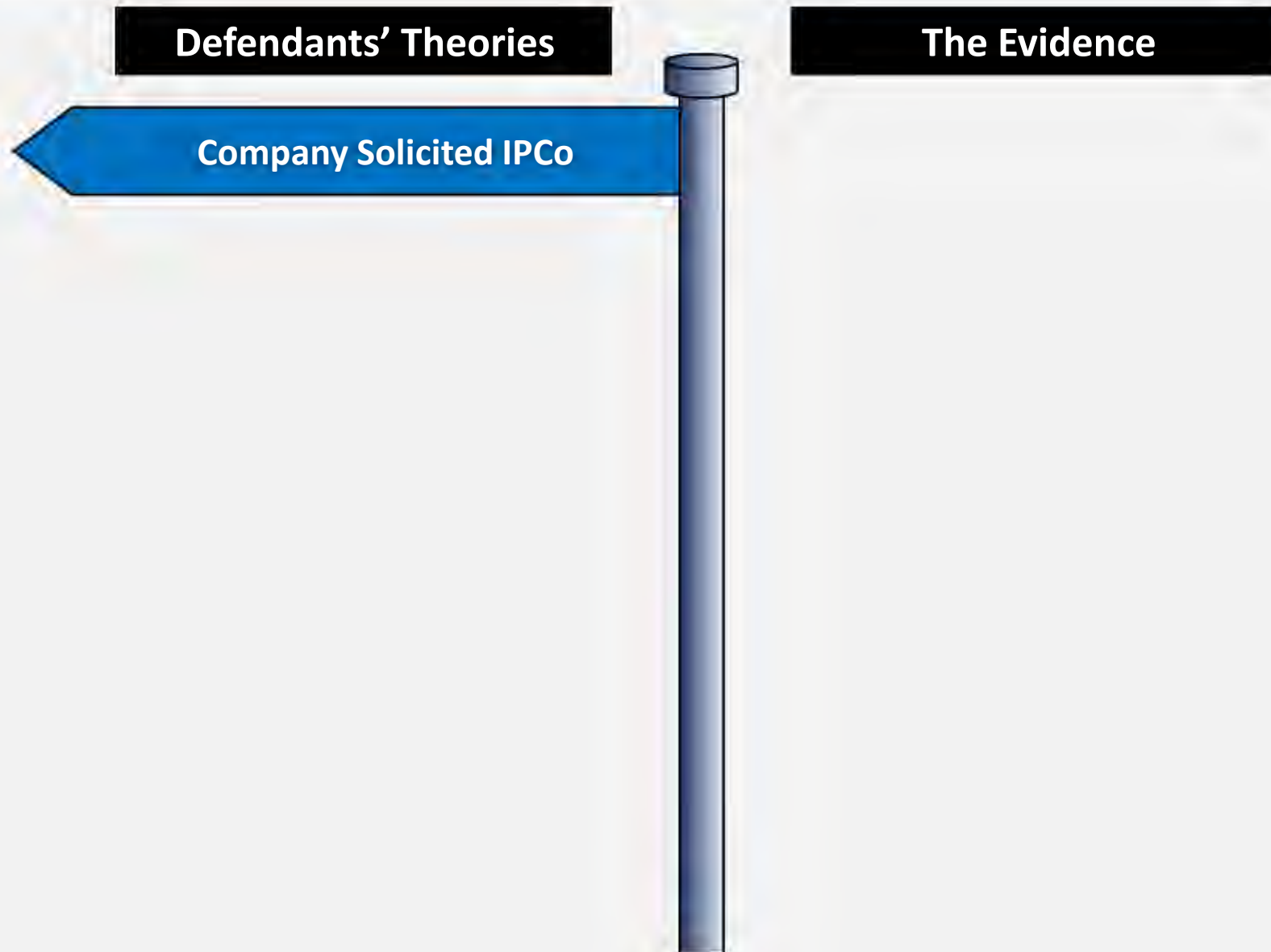
AG_SSBADVERSARY_00000529



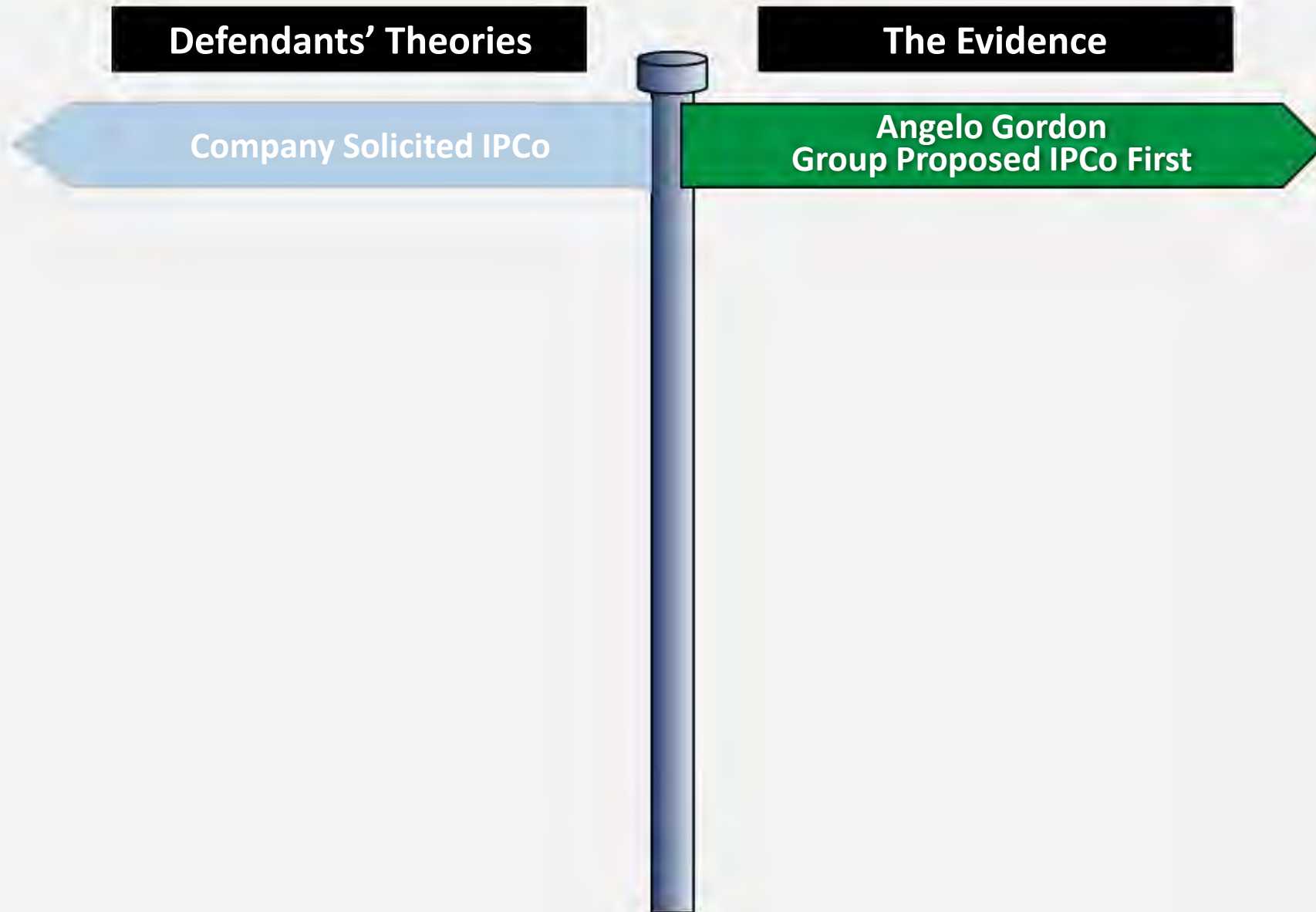
Serta First Lien Debt Price



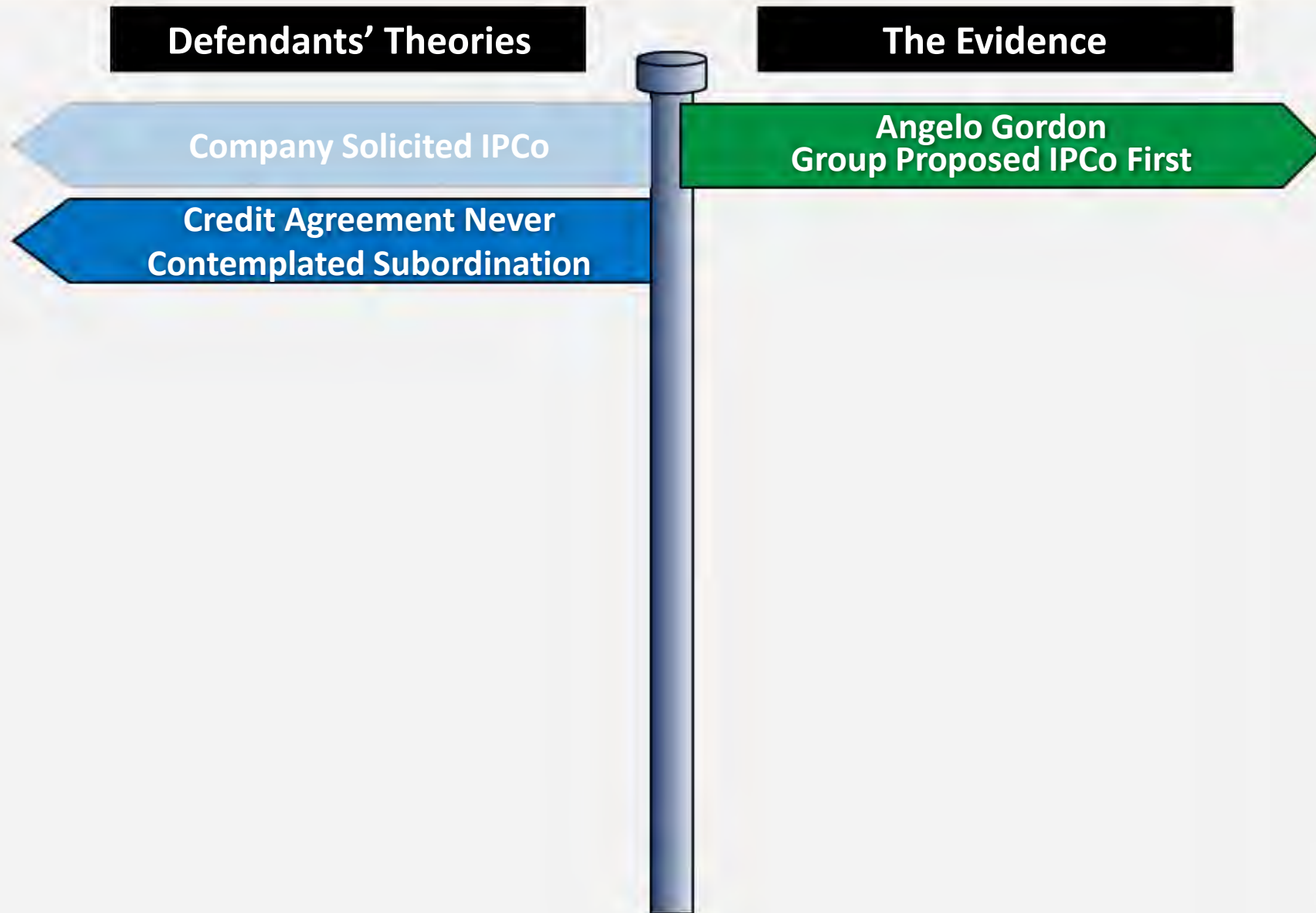
Defendants' Theory #1 - Company Solicited IPCo



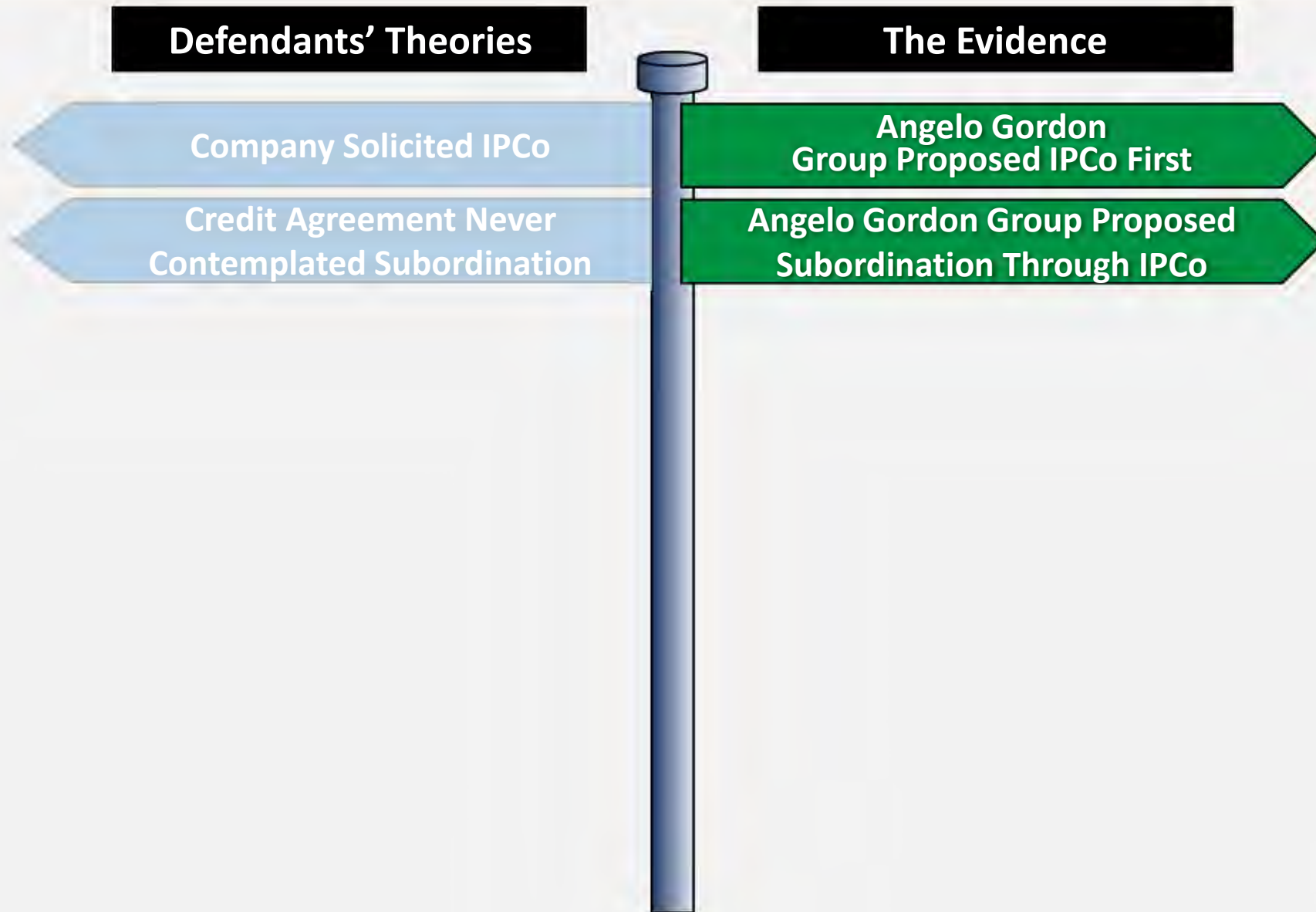
Defendants' Theory #1 - Company Solicited IPCo



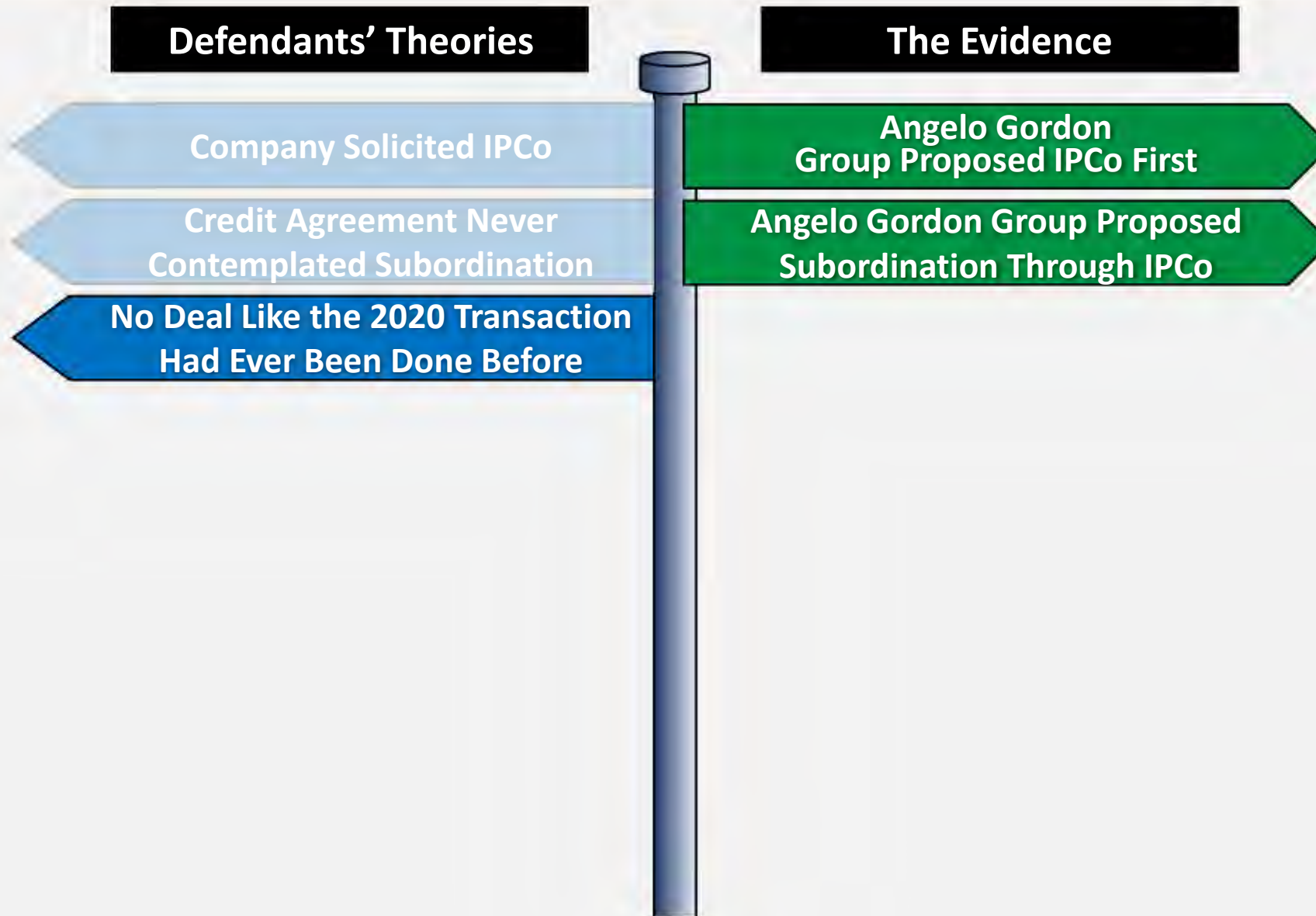
Defendants' Theory #2 - Never Contemplated Subordination



Defendants' Theory #2 - Never Contemplated Subordination



Defendants' Theory # 3 – Novel Transaction



Defendants' Theory # 3 – Novel Transaction



Roopesh Shah

1	IN THE UNITED STATES BANKRUPTCY COURT	1
2	FOR THE SOUTHERN DISTRICT OF TEXAS	
3	HOUSTON DIVISION	
4	IN RE:	CASE NO. 23-05102-11
5	SEPTA FINNORS RECEIVING, LLC,	JOSEPH A. HENDERSON
6	ET AL,	HOUSTON, TEXAS
7		NOTES
8	FILED:	MAY 15, 2023
9		1:01 P.M. TO 6:00 P.M.
10	SEPTA FINNORS RECEIVING, LLC,	CASE NO. 23-05102-11
11	ET AL,	JOSEPH A. HENDERSON
12		HOUSTON, TEXAS
13	VS:	MAY 15, 2023
14	IN CENTRE STREET PARTNERSHIP,	1:01 P.M. TO 6:00 P.M.
15	ET AL,	
16	<u>CONFIDENTIAL DAY ONE -- AFTERNOON SESSION (VIA ROOM)</u>	
17	REPORTER THE HONORABLE DAVID R. JONES	
18	UNITED STATES BANKRUPTCY JUDGE	
19	APPEARANCES:	SEE NEXT PAGE
20	COURTROOM DEPUTY:	VERA PORTILLO
21		
22	(Recorded via CourtScribe)	
23	TRANSCRIPTION SERVICE BY:	
24	JUDICIAL TRANSCRIPTORS OF TEXAS, LLC	
25	975 KILGORE BLVD, #140	
	HOUSTON, TX 77078	
	(512) 777-2123	
	www.judicialtranscripts.com	
	Proceedings recorded by electronic sound recording;	
	transcript produced by transcription service.	
	JUDICIAL TRANSCRIPTORS OF TEXAS, LLC	

ROOPESH SHAH - CROSS BY MR. SEILER 83

1 company would be repurchasing debt at a discount, had you
2 ever worked on a transaction that had those elements prior
3 to Septa?
4 A Personally, not with every one of those elements.
5 Q That's what I'm asking. My question is all of those
6 together?
7 A I had not.
8 Q And no one at Evercore had either, to your knowledge,
9 correct?
10 A That I don't know.
11 Q And you're not aware of any such transaction that
12 anyone in the market had worked on with all of those
13 elements together?
14 A I'm not sure if that's the case. I thought there has
15 been some precedent transactions where those elements were
16 present.
17 Q So, I'm going to ask you to affirmatively
18 testify to this court that affirmatively
19 testify that there were such transactions that had all
20 those elements in them?
21 A I could tell you that I believe I've read cases that
22 would have had them, but I'm not an expert and didn't work
23 on those. So, I can't affirmatively say that they had all
24 of those things. I know in the back of my mind I've read
25 about a couple of cases that would have had those, but

JUDICIAL TRANSCRIPTORS OF TEXAS, LLC

11 Q And you're not aware of any such transaction that
12 anyone in the market had worked on with all of those
13 elements together?
14 A I'm not sure if that's the case. I thought there has
15 been some precedent transactions where those elements were
16 present.



Defendants' Theory # 3 – Novel Transaction



DAVIS MEIERING

1	IN THE UNITED STATES DISTRICT COURT	1
2	FOR THE SOUTHERN DISTRICT OF TEXAS	
3	HOUSTON DIVISION	
4	IN RE: CASE NO. 23-09001-11	
5	SERTA FINANCIAL SERVICES, LLC, d/b/a CERTA	JOSEPH A. MEIERING
6	ET AL. HOUSTON, TEXAS	
7	VERSUS MAY 15, 2023	
8	FEEDBACK 1:01 P.M. TO 6:00 P.M.	
9	SERTA FINANCIAL SERVICES, LLC, d/b/a CERTA	CASE NO. 23-09001-11
10	ET AL. HOUSTON, TEXAS	JOSEPH A. MEIERING
11	VERSUS MAY 15, 2023	
12	AT CENTRE STREET PARTNERSHIP, 1001 P.M. TO 6:00 P.M.	
13	ET AL.	
14	CONFIDENTIAL DAY ONE -- AFTERNOON SESSION (VIA ROOM)	
15	REPORT THE HONORABLE DAVID R. JONES	
16	UNITED STATES DISTRICT COURT	
17	APPEARANCES: SEE NEXT PAGE	
18	COURTROOM DEPUTY: VERENA PORTILLO	
19	(Recorded via Courtroom)	
20	TRANSCRIPTION SERVICE BY:	
21	JUDICIAL TRANSCRIPTIONS OF TEXAS, LLC	
22	575 KILGORE BLVD., SUITE 1100	
23	HOUSTON, TEXAS 77057	
24	TEL: 713-771-2121	
25	WWW.JUDICIALTRANSCRIPTIONS.COM	
	Proceedings recorded by electronic sound recording/ transcript produced by transcription service.	
	JUDICIAL TRANSCRIPTIONS OF TEXAS, LLC	

1	A	Sorry, could you repeat that question?	79
2	Q	Sure. What was your reaction when you learned that	
3	Serta had accepted the proposal that CSAN and others were		
4	offering?		
5	A	I mean, I don't really remember exactly how I reacted,	
6	but I imagine we would have been relieved that we weren't,		
7	you know, being exposed to the kind of risk that would have,		
8	you know, accompanied their proposal.		
9	MR. NADLER: The court reporter asked if you could		
10	please repeat that?		
11	THE WITNESS: Sure.		
12	BY MR. NADLER:		
13	Q	The court reporter asked if you could please repeat	
14	that. We didn't quite get it in the courtroom.		
15	A	Oh, apologies. I think I said something along the	
16	lines of I don't remember exactly how I reacted at that		
17	moment, but I imagine I would have been, you know, relieved		
18	that we weren't, you know, left in the Apollo, Angelo		
19	proposal exposed to the kind of risk that was mentioned.		
20	Q	Now, the Defendants in this case have argued that the	
21	2020 transaction that Serta did engage in was, quote,		
22	"Unprecedented and contrary to the expectations of the		
23	markets and the parties."		
24	What's your reaction to that?		
25	A	I mean, I find that a bit surprising and contrary to	

20 Q Now, the Defendants in this case have argued that the
21 2020 transaction that Serta did engage in was, quote,
22 "Unprecedented and contrary to the expectations of the
23 markets and the parties."

24 What's your reaction to that?

25 A I mean, I find that a bit surprising and contrary to
1 the expectation of the parties because from an economic
2 perspective, their proposal had a lot of similarities.

3 You know, from the market broadly, look, I mean, you
4 don't see these types of transactions every day. And, you
5 know, maybe there are some nuances to this one. But similar
6 types of, you know, transactions that have similar economic
7 features have certainly occurred. So I don't think it
8 should have been unexpected.



Defendants' Theory # 3 – Novel Transaction



Michael Searles

1	IN THE UNITED STATES BANKRUPTCY COURT	1
2	FOR THE SOUTHERN DISTRICT OF TEXAS	
3	SOUTHERN DIVISION	
4	IN RE:	5 CASE NO. 23-01020-JL
5	SERTA FINANCIAL HOLDING, LLC,	6 JOSEPH A. HENDERSON
6	ET AL,	7 HOUSTON, TEXAS
7	FEEDBACK	8 MAY 15, 2023
8	SERTA FINANCIAL HOLDING, LLC,	9 1:01 P.M. TO 6:00 P.M.
9	ET AL	10 CASE NO. 23-01020-JL
10	VERSUS	11 JOSEPH A. HENDERSON
11	AS CENTRE STREET PARTNERSHIP,	12 HOUSTON, TEXAS
12	ET AL	13 MAY 15, 2023
14	1:01 P.M. TO 6:00 P.M.	
15	CONFIDENTIAL DAY ONE -- AFTERNOON SESSION (VIA ECHO)	
16	BEFORE THE HONORABLE DAVID R. JONES	
17	UNITED STATES BANKRUPTCY JUDGE	
18	APPEARANCES:	19 SEE NEXT PAGE
19	COURTROOM DEPUTY:	20 VERA PORTILLO
21	(Recorded via CourtScribe)	
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NICHOLAS SEARLES - CROSS BY MR. GOLDMAN 64

1 -- to the question, pre-Serta, specifically with these
 2 components, did you ever participate in a priming facility
 3 that was also combined with a debt exchange at a discount?
 4 A I do believe so, yes, but when you say I think the
 5 opening was something around specifically more specific to
 6 it, an exact transaction like this, though.
 7 Q All right.
 8 A Again, I'll say generally speaking, yes.

9 Q Now save me more specific to offer
 10 what in mind?
 11 A I don't believe you asked me specifically.
 12 But I'm happy to give you a sense of some that we
 13 White Energy we were involved with, Cineworld to a
 14 extent was somewhat similar in a number of different
 15 instances that was [indiscernible 3:31:36] world. In a
 16 wild world I think we've done a couple of -- Apollo had one
 17 that was a 1-1/8 lien I believe at one point. Now again,
 18 different transactions, different circumstances, but there
 19 were serial exchanges, some involved new money, some didn't.
 20 Q Okay. Thank you.
 21 MR. GOLDMAN: No further questions.
 22 THE COURT: All right. Thank you.
 23 MR. MILLER?
 24 CROSS-EXAMINATION
 25 BY MR. MILLER:

JUDICIAL TRANSCRIPTERS OF TEXAS, LLC

24 Q So just I'm clear on the answer --

25 A Yeah.

1 Q -- to the question, pre-Serta, specifically with these
 2 components, did you ever participate in a priming facility
 3 that was also combined with a debt exchange at a discount?
 4 A I do believe so, yes, but when you say I think the
 5 opening was something around specifically more specific to
 6 it, an exact transaction like this, though.

7 Q All right.

8 A Again, I'll say generally speaking, yes.



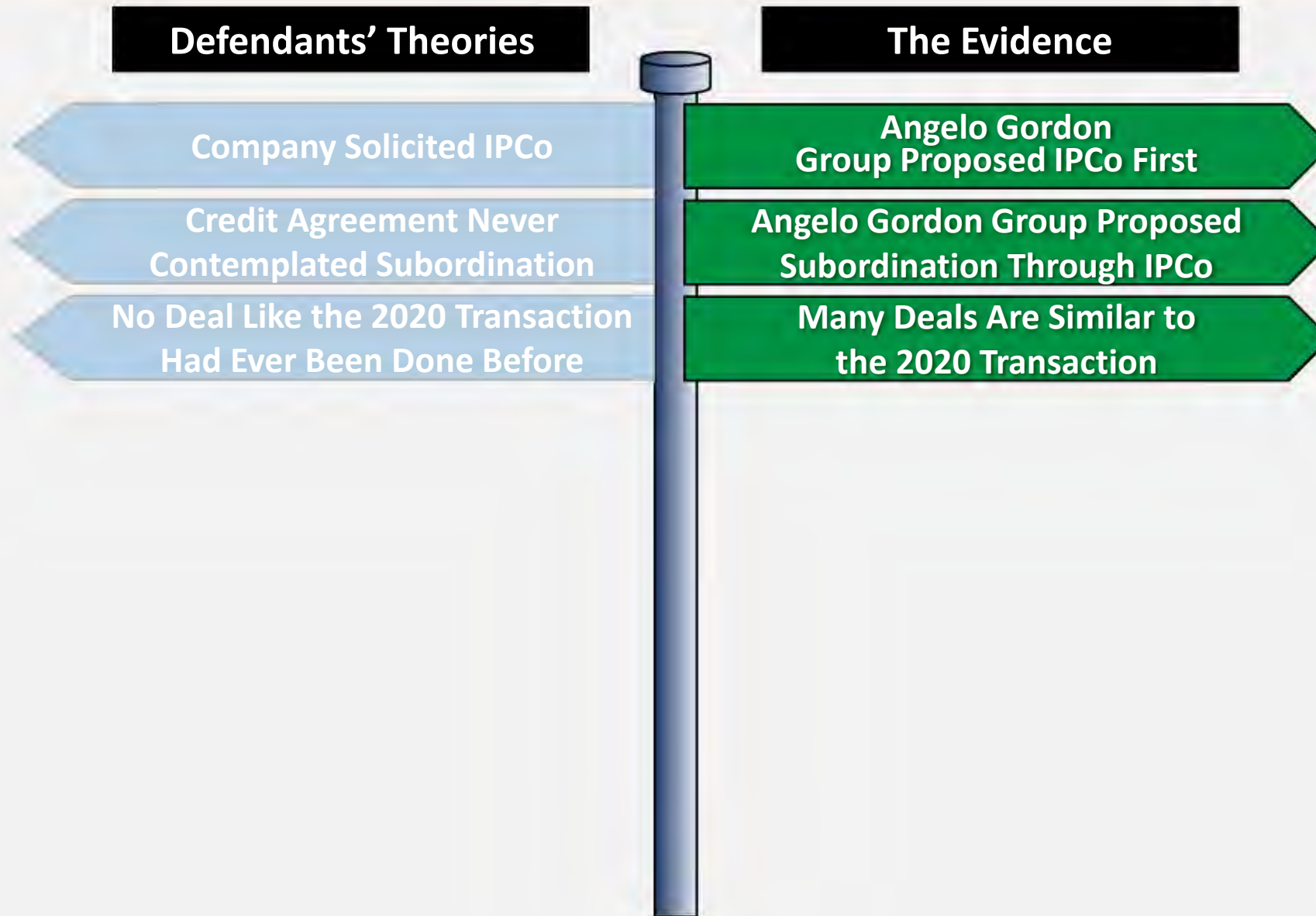


1 IN THE UNITED STATES MARSHALRY COURT
2
3 FOR THE DISTRICT OF TEXAS
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5 SHERIFF ADVISORY
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7
8 IN RE: # CASE NO. 23-05002-011
9 # JOSEPHY AMERSTREED
10 # HOUSTON, TEXAS
11 # MAY 17, 2023
12 # 1:01 P.M. TO 6:00 P.M.
13 # FEDERAL
14 # JOSEPHY AMERSTREED
15 # HOUSTON, TEXAS
16 # MAY 17, 2023
17 # 1:01 P.M. TO 6:00 P.M.
18 # VERDUS
19 # HOUSTON,
20 # MAY 17, 2023
21 # 1:01 P.M. TO 6:00 P.M.
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25 **CONFIDENTIAL DATA ONLY - ATTORNEY REVIEW (VIA ROOM)**
26
27 REPLY TO HONORABLE DAVID R. JONES
28 UNITED STATES MARSHALRY COURT
29
30
31 APPEARANCES: THE NEXT PAGE
32
33 COURTROOM DEPUTY: VILIANA BORTOLLO
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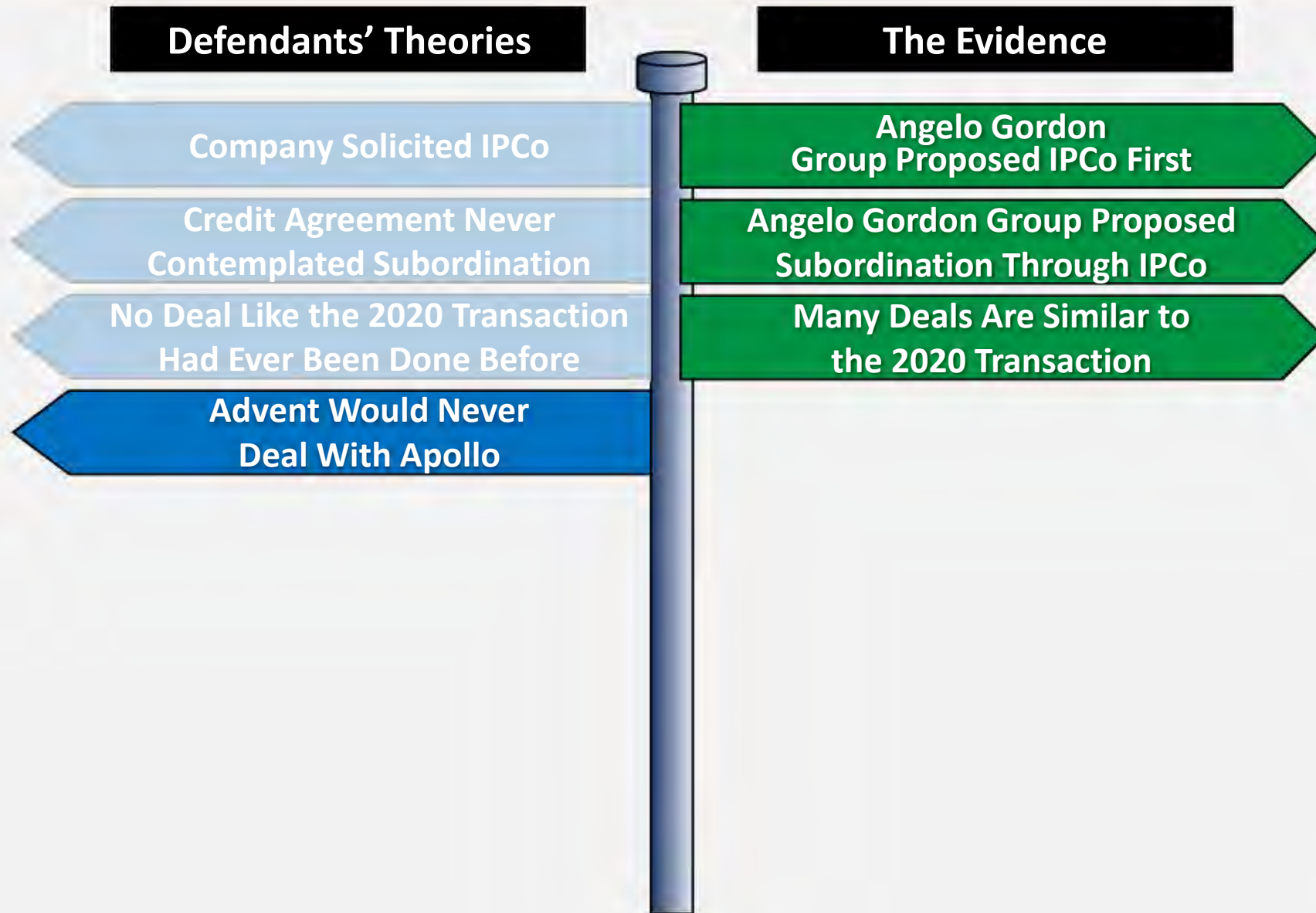
9 Q You have no more specifics to offer on the deals you
10 have in mind?

11 A I don't believe you asked me specifically about deals,
12 but I'm happy to give you a sense of some that we have done.
13 Murray Energy we were involved with, Cineworld to a certain
14 extent was somewhat similar in a number of different
15 instances that was [indiscernible 3:31:36] world. In a high
16 yield world I think we've done a couple of -- Apollo had one
17 that was a 1-1/8 lien I believe at one point. Now again,
18 different transactions, different circumstances, but there
19 were serial exchanges, some involved new money, some didn't.

Defendants' Theory # 3 – Novel Transaction



Defendants' Theory # 4 - Advent Would Never Deal with Apollo



Defendants' Theory # 4 - Advent Would Never Deal with Apollo

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

IN RE: § CASE NO. 23-90020-11
 § JOINTLY ADMINISTERED
SERTA SIMMONS BEDDING, LLC, § HOUSTON, TEXAS
ET AL., § MONDAY,
 § MAY 15, 2023
 § 9:10 A.M. TO 12:24 P.M.

71

1 And you're going to hear evidence that Advent, which
2 owned Serta, was the controlling shareholder and Mr. Prince,
3 they didn't really want to do a deal that involved Apollo
4 because they were competitors and they didn't want to have a
5 credit where Apollo had an interest. So and that's part of the
6 part of the story behind the DQ. Apollo is viewed as someone
7 you could negotiate with, but we don't really want them at
8 all.

9 So you're going to see evidence that talks about the
10 role of Apollo, and I think what you'll conclude is,
11 respectfully, that we were only an option if the other option
12 fell apart. So we were the stalking horse to get the other
13 option more motivated, but we were only an other option if the
14 option fell apart. And there's going to be a lot of evidence
15 about who got to be in and who got to be out of it. I'm not
16 talking about subsequent purchases, those are fine. I'm
17 talking about who got included in the transaction that they
18 needed to get the 50.1 percent.

19 And so we're going to point to that as an improper
20 process, not the beginning, not through the April, the end of
21 April, but in May, the very end of May and the first of June,
22 and then we're going to show which provisions they tweaked to
23 make sure they got what they got, and there's some evidence --
24 we're going to show you improper communications with third
25 parties that I'll wait till we show them to talk about their

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1 And you're going to hear evidence that Advent, which
2 owned Serta, was the controlling shareholder and Mr. Prince,
3 they didn't really want to do a deal that involved Apollo
4 because they were competitors and they didn't want to have a
5 credit where Apollo had an interest. So and that of course is



Defendants' Theory # 4 - Advent Would Never Deal with Apollo



Roopesh Shah

1	IN THE UNITED STATES BANKRUPTCY COURT	1
2	FOR THE SOUTHERN DISTRICT OF TEXAS	
3	SECTION DIVISION	
4	IN RE:	6 CASE NO. 23-09001-11
5	SEPTA SIMMONS READING, LLC,	6 JUDITH ANNUNTIATED
6	ET AL,	6 HOUSTON, TEXAS
7	FEEDORA,	6 HOUSTON, TEXAS
8	ET AL,	6 MAY 15, 2023
9	VERVO,	6 1:01 P.M. TO 6:00 P.M.
10	AS CENTRE STREET PARTNERSHIP,	6 CASE NO. 23-09001-10
11	ET AL,	6 JUDITH ANNUNTIATED
12		6 HOUSTON, TEXAS
13		6 MAY 15, 2023
14		6 1:01 P.M. TO 6:00 P.M.
15		
16	CONFIDENTIAL DAY ONE - AFTERNOON SESSION (VIA ROOM)	
17	REPORTING THE HONORABLE DAVID R. JONES	
18	UNITED STATES BANKRUPTCY JUDGE	
19	APPEARANCES:	SEE NEXT PAGE
20	COURTROOM DEPUTY:	VERA PORTILLO
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1	ROOPESH SHAH - CROSS BY MR. SEILER	96
2	Q I don't recall. I don't have a specific recollection.	
3	Q And how about the CEO of Serta? Same question.	
4	A I believe we did -- I don't remember the CEO. I do	
5	know with the CFO we would have had those conversations.	
6	Q During that period of time, May 26th to June 4th?	
7	A I believe so, but again, I can't recall a specific, but	
8	I do recall generally having conversations with management	
9	about the implications of those proposals.	
10	Q Did Mr. Prince concur with your decision to recommend	
11	the Interview proposal before you made the recommendation	
12	to the Finance Committee?	
13	A I believe he did.	
14	Q Did Mr. Prince ever express a view to you about whether	
15	he not be was willing to do a transaction with the group	
16	that included Apollo?	
17	A Could you just repeat the question?	
18	MR. SEILER: Could you read it back, please?	
19	COURT REPORTER: Sure.	
20	(The following reading is not from an official	
21	transcript.)	
22	FEMALE SPEAKER: "Did Mr. Prince ever express	
23	view to you about whether or not he was willing to do	
24	transaction with the group that included Apollo?"	
25	THE WITNESS: I believe he was supportive of doing	
	a transaction with Apollo while we were negotiating it.	
	JUDICIAL TRANSCRIPTIONS OF TEXAS, LLC	

21 FEMALE SPEAKER: "Did Mr. Prince ever express a
22 view to you about whether or not he was willing to do a
23 transaction with the group that included Apollo?"

24 THE WITNESS: I believe he was supportive of doing
25 a transaction with Apollo while we were negotiating it.

1 Certainly, by June 4th or 5th, his recommendation or his
2 viewpoint had changed.

3 BY MR. SEILER:

4 Q So, even though they were on the DQ List, he was
5 supportive of doing a transaction with a group that included
6 Apollo?

7 A Yes.

8 Q And he told you that?

9 A That's why were negotiating with his knowledge and
10 understanding, and there was no other alternative until the
11 very wee last few days. So, yes.

Defendants' Theory # 4 - Advent Would Never Deal with Apollo

Case 23-09001 Document 250-82 "SEALED" Filed in TXSB on 05/14/23 Page 2 of 6

From: Muehls, David A. (NDOC 3) [CHOCHEFF-SUSSE/CREDIT-ADVERSARIAL GROUP]
 (p) 908.907.2330 (t) 908.907.2330 (c) 908.907.2330
 Sent: 6/7/2020 2:11:44 PM
 To: Muehls, David (NDOC 3) [dave.muehls@credit-adversarial.com]
 Subject: Bloomberg 66-Case/Issue 62/908.907.2330

Interaction Information
 startdate: 2020-06-05T09:25:01-0400
 enddate: 2020-06-05T10:02:50-0400
 employeeid: dmeiering
 buddyname: dmeiering
 employeeid: InstantBloomberg
 employeeid: InstantBloomberg

Case 23-09001 Document 250-82 "SEALED" Filed in TXSB on 05/14/23 Page 3 of 6

I'll try to find out but capgemini might not break it out as a our reporter

InstantBloomberg:dmeiering (2020-06-05T09:26:15-0400):

Could just see it get rapid

InstantBloomberg:dmeiering (2020-06-05T09:26:43-0400):
 Capgemini reports half year with brief quarters, so we debt update

InstantBloomberg:dmeiering (2020-06-05T09:28:22-0400):
 Capgemini is 800 with a EUR 1.8m market cap, and 6.1m of debt before any Altran still a/s. Leverage looks to be about 1.5 gross and 1.2 net

InstantBloomberg:dmeiering (2020-06-05T09:30:13-0400):
 Their 2022 euro bonds are in the 110 context yielding 1.4%, so yes

InstantBloomberg:dmeiering (2020-06-05T09:35:23-0400):
 MACOM STOCK 12 WEEK HIGH

InstantBloomberg:dmeiering (2020-06-05T09:36:46-0400):
 All of the same cooking

InstantBloomberg:dmeiering (2020-06-05T09:38:49-0400):
 2 wish I bought more than just avg

InstantBloomberg:dmeiering (2020-06-05T09:38:58-0400):
 Hopefully we still in that

InstantBloomberg:dmeiering (2020-06-05T09:37:52-0400):
 Also its kind of amazing to me that nobody else cares about the eq

InstantBloomberg:dmeiering (2020-06-05T09:38:08-0400):
 I just bid \$2.25 to see if anyone sells

InstantBloomberg:dmeiering (2020-06-05T09:38:22-0400):
 I've also been bidding com up a pt a day and zero supply

InstantBloomberg:dmeiering (2020-06-05T09:38:29-0400):
 Moved from 84 to 86

InstantBloomberg:dmeiering (2020-06-05T09:38:31-0400):
 In doing a gig call on com Monday btw

InstantBloomberg:dmeiering (2020-06-05T09:38:44-0400):
 Can't know know

InstantBloomberg:dmeiering (2020-06-05T10:02:39-0400):
 An additional call on Serta

InstantBloomberg:dmeiering (2020-06-05T10:02:50-0400):
 uh oh

InstantBloomberg:dmeiering (2020-06-05T10:02:50-0400):
 Advent earmarked Barings, Oaktree, and TPG to fill the gap

InstantBloomberg:dmeiering (2020-06-05T10:03:02-0400):
 The last 10%

InstantBloomberg:dmeiering (2020-06-05T10:03:06-0400):

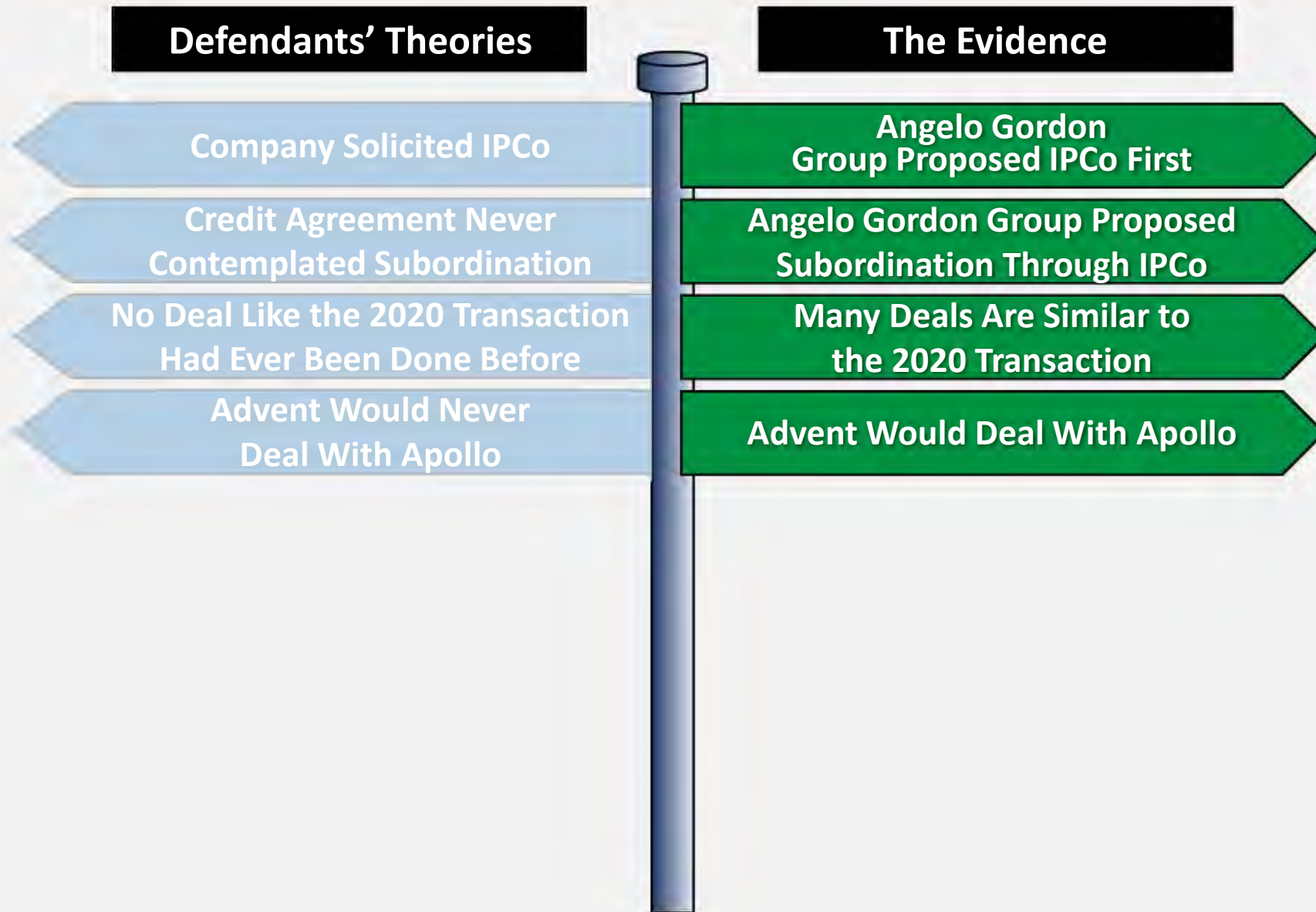
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 Highly Confidential

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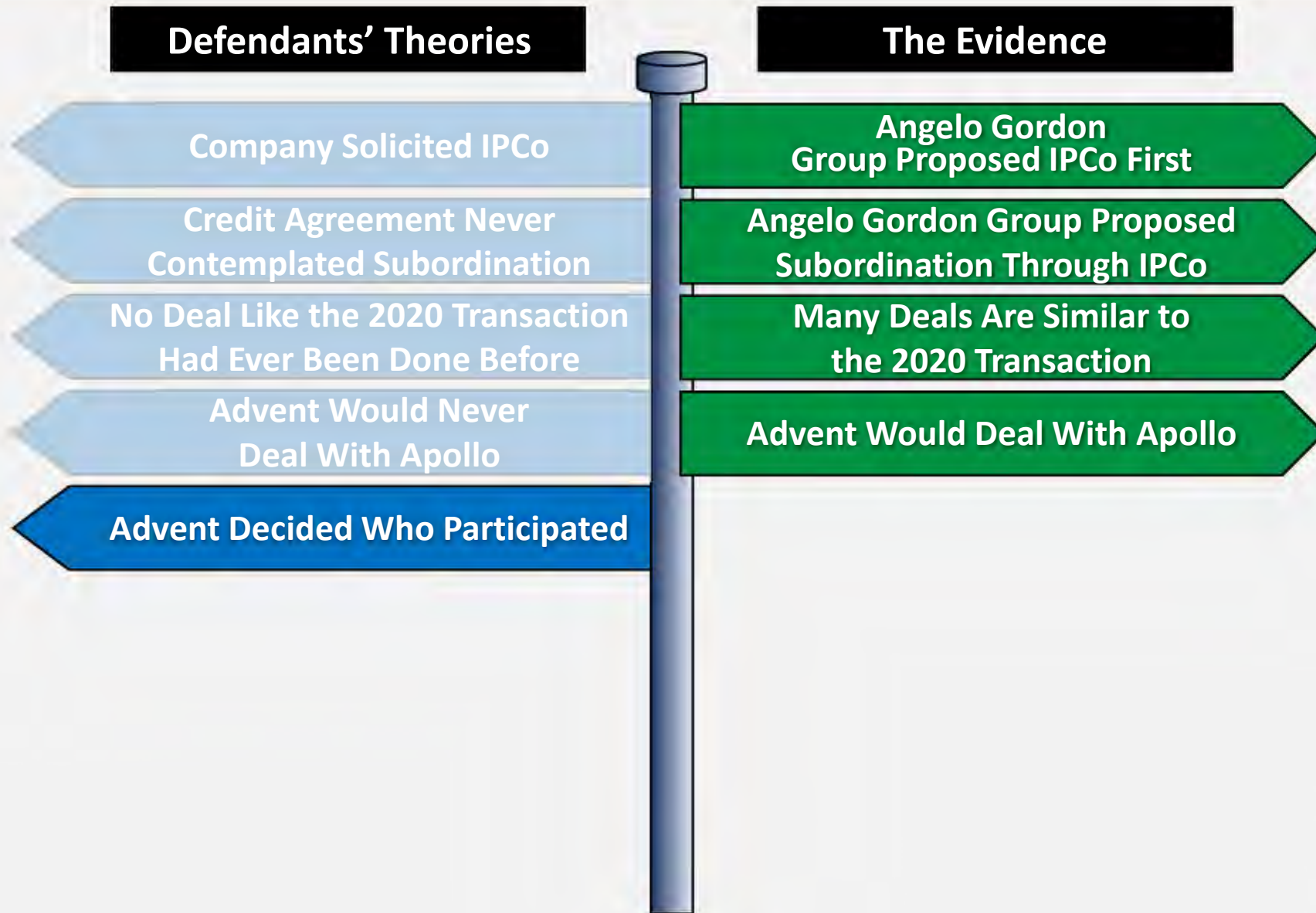
InstantBloomberg:dmeiering (2020-06-05T10:02:50-0400):
 Advent earmarked Barings, Oaktree, and TPG to fill the gap



Defendants' Theory # 4 - Advent Would Never Deal with Apollo



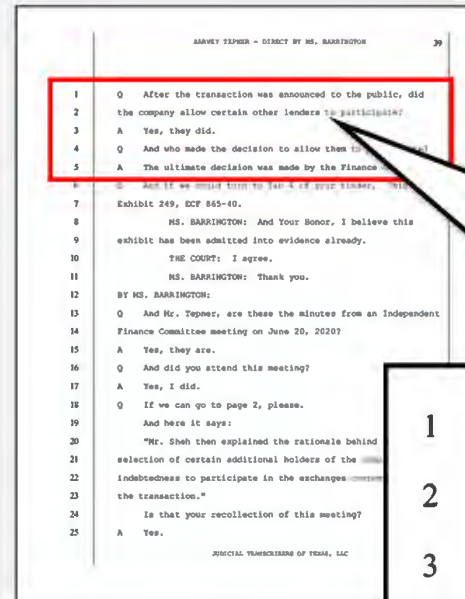
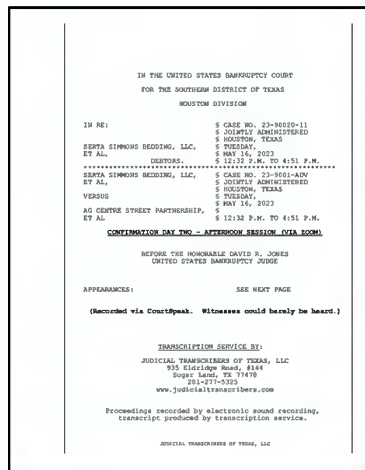
Defendants' Theory # 5 - Advent Decided Who Participated



Defendants' Theory # 5 - Advent Decided Who Participated

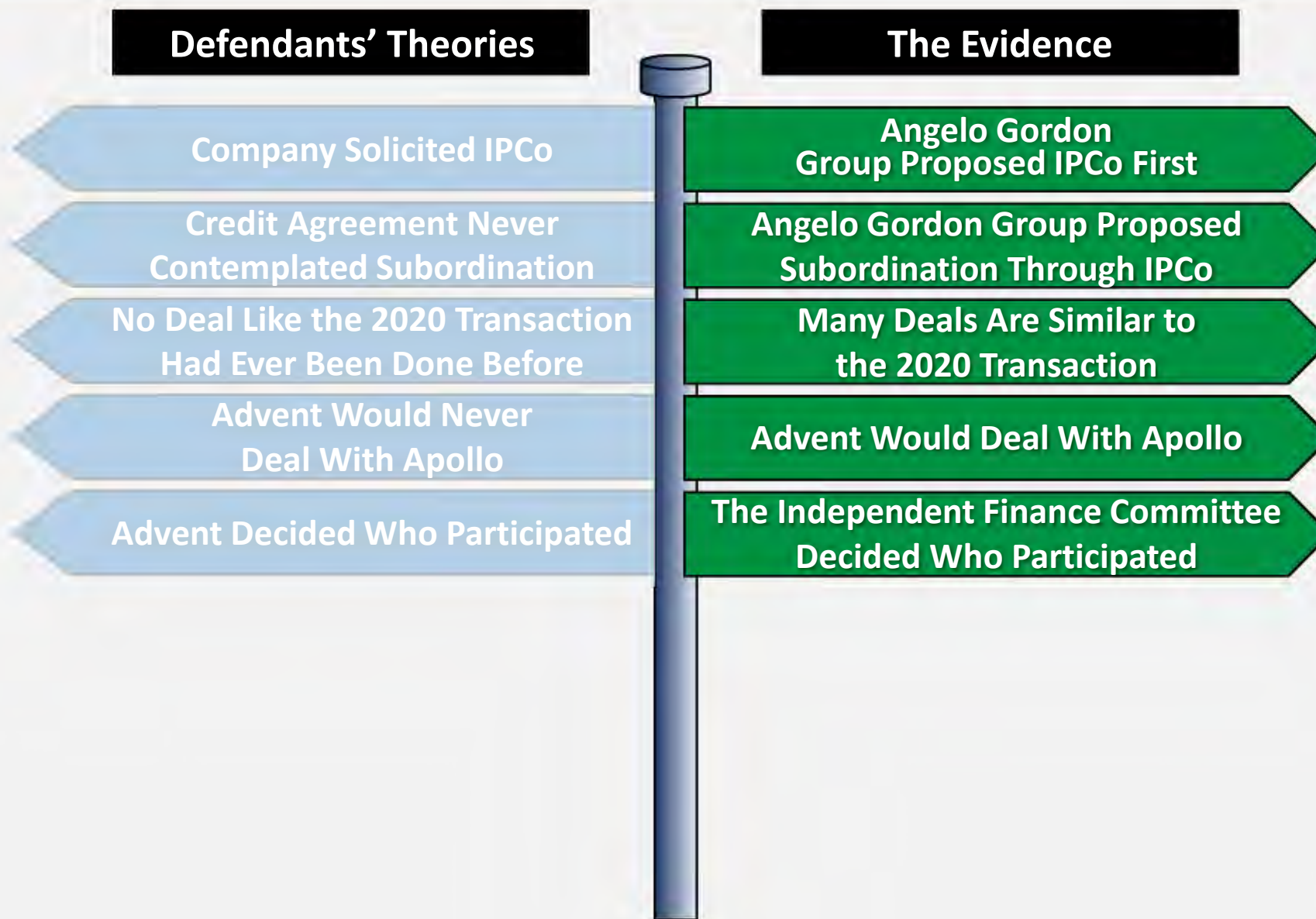


Harvey Tepner

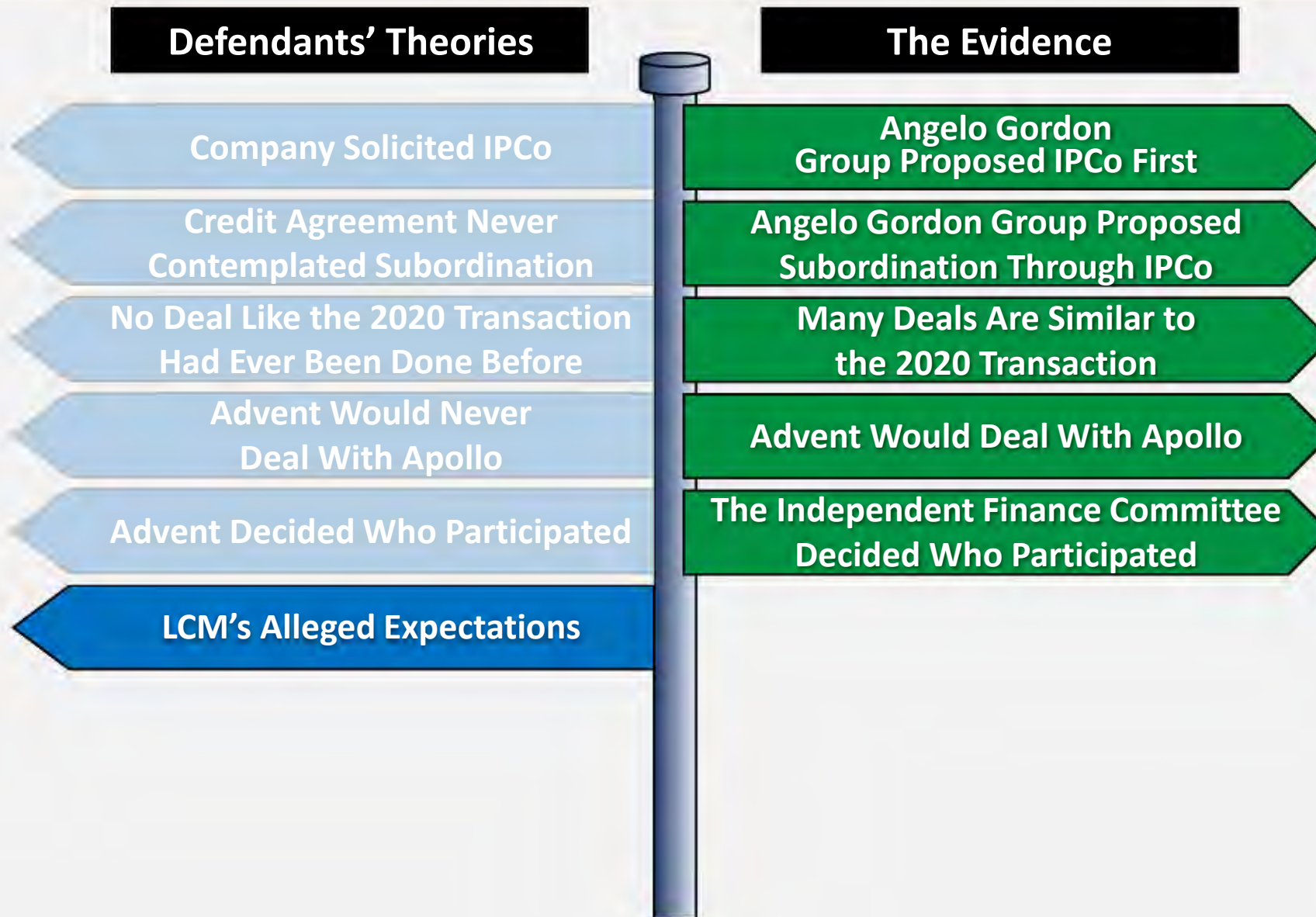


1 Q After the transaction was announced to the public, did
2 the company allow certain other lenders to participate?
3 A Yes, they did.
4 Q And who made the decision to allow them to participate?
5 A The ultimate decision was made by the Finance Committee.

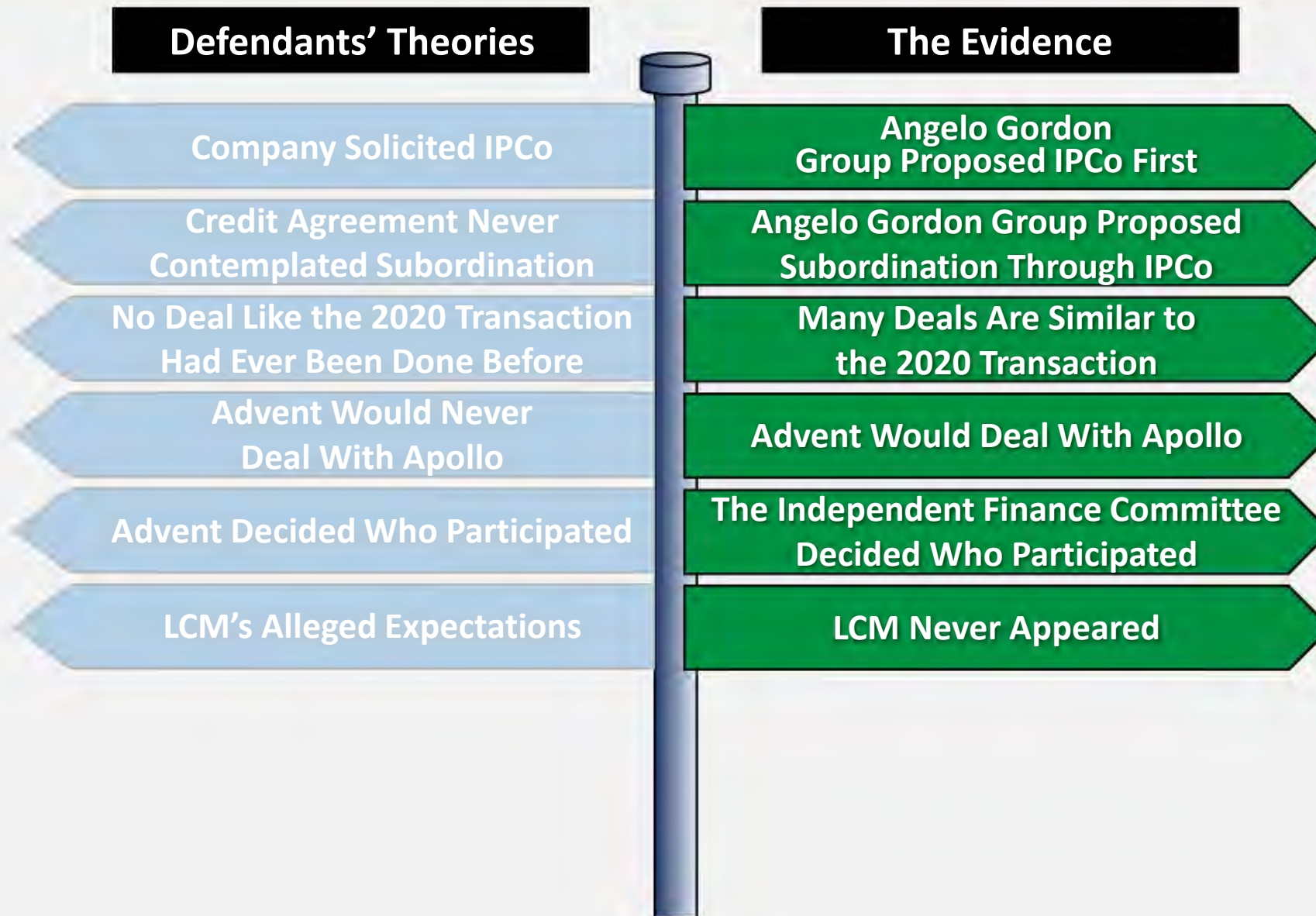
Defendants' Theory # 5 - Advent Decided Who Participated



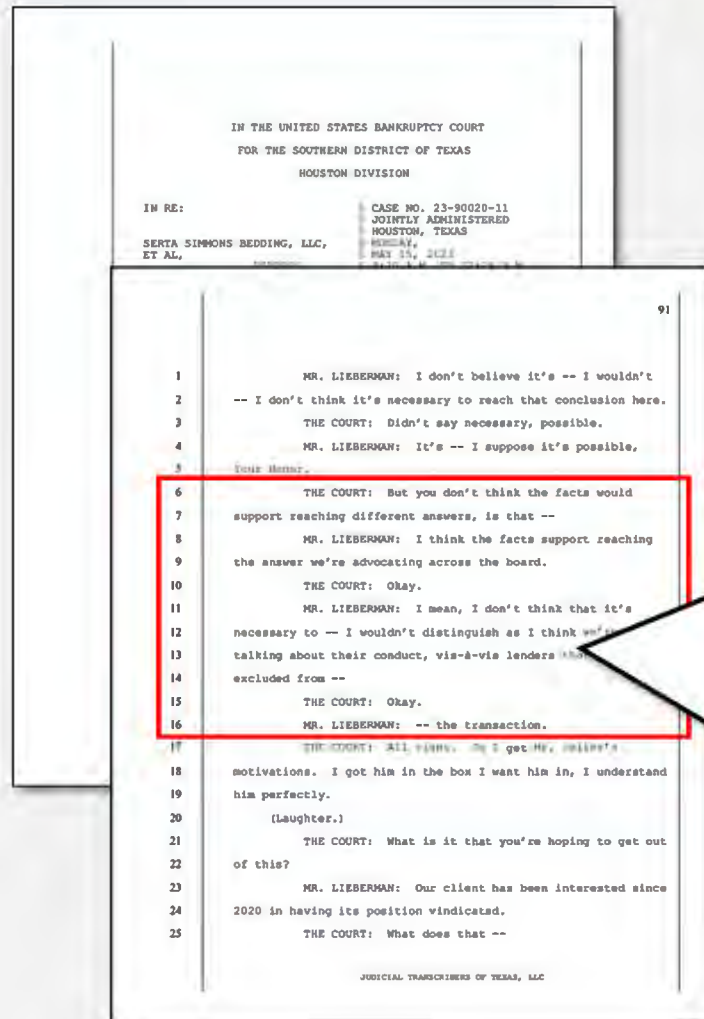
Defendants' Theory # 6 - LCM's Alleged Expectations



Defendants' Theory # 6 - LCM's Alleged Expectations



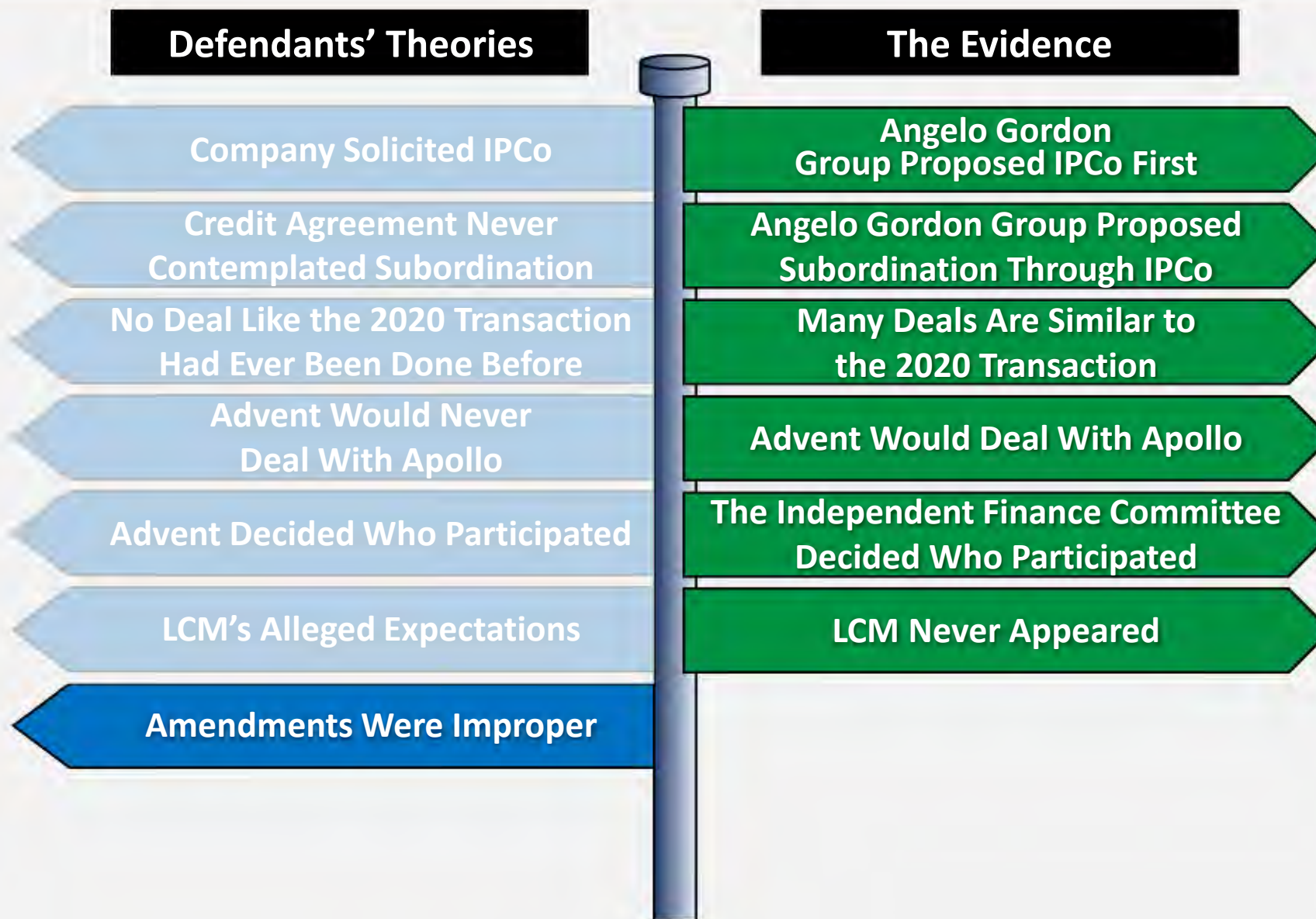
LCM = Non-PTL Lenders



6 THE COURT: But you don't think the facts would
7 support reaching different answers, is that --
8 MR. LIEBERMAN: I think the facts support reaching
9 the answer we're advocating across the board.
10 THE COURT: Okay.
11 MR. LIEBERMAN: I mean, I don't think that it's
12 necessary to -- I wouldn't distinguish as I think we're
13 talking about their conduct, vis-à-vis lenders that are
14 excluded from --
15 THE COURT: Okay.
16 MR. LIEBERMAN: -- the transaction.



Defendants' Theory # 7 - Amendments Were Improper



Defendants' Theory # 7 - Amendments Were Improper

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IN THE UNITED STATES BANKRUPTCY COURT FOR THE SOUTHERN DISTRICT OF TEXAS HOUSTON DIVISION

In re:	Chapter 11
SERTA SIMMONS BEDDING, LLC, et al.,	Case No. 23-90020 (DRJ)
Debtors,	(Jointly Administered)
SERTA SIMMONS BEDDING, LLC, INVESCO SENIOR SECURED MANAGEMENT, INC., CREDIT SUISSE ASSET MANAGEMENT, LLC, BOSTON MANAGEMENT AND RESEARCH, EATON VANCE MANAGEMENT, AND BARINGS LLC,	

Adversary Proc. No. 23-09001 (DRJ)

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268. To interpret the Unlawful Exchange Transaction as an open market purchase would allow nearly any transaction to be considered an open market purchase, capable of circumventing the stringent *pro rata* payment requirements and the associated "sacred rights" protections. Indeed, in Serta's own words, the Unlawful Exchange Transaction constituted a "recapitalization" of the company. Permitting a wholesale recapitalization of the company (with participation only open to a majority of the Lenders, and excluding the remainder) to qualify as a purported open market purchase would allow the limited exception to swallow the rule entirely.

269. Serta and the Favored Lenders cannot point to a *single* comparable precedent transaction that has qualified as an "open market purchase." In the litigation that has occurred to date, Serta and the Favored Lenders have cited a handful of transactions as purportedly adopting their contorted view of "open market purchases," but such transactions involved *solely new money* loans. The Excluded Lenders do not dispute that the new money aspect of the Unlawful Exchange Transaction was permitted, since new money loans could be given priority without a unanimous vote. The *non-pro rata* payment of the Favored Lenders' First Lien Term Loans using new Priority Term Loans violated the Credit Agreement's requirement that all First Lien Term Loans share ratably in payments. None of the so-called precedent transactions cited by Serta and the Favored Lenders included an exchange of existing loans on a *non-pro rata* basis.

270. Notably, in denying Serta's motion to dismiss the LCM Action, Judge Failla rejected the company's view that, on its face, the Unlawful Exchange Transaction involved an "open market purchase" that would be an exception to the *pro rata* sharing requirement. She held that "at a minimum," the term "open market purchase" is "ambiguous in

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269. Serta and the Favored Lenders cannot point to a *single* comparable

precedent transaction that has qualified as an "open market purchase." In the litigation that has occurred to date, Serta and the Favored Lenders have cited a handful of transactions as purportedly adopting their contorted view of "open market purchases," but such transactions

involved *solely new money* loans. The Excluded Lenders do not dispute that the new money

aspect of the Unlawful Exchange Transaction was permitted, since new money loans could be

given priority without a unanimous vote. The non-*pro rata* payment of the Favored Lenders'

First Lien Term Loans using new Priority Term Loans violated the Credit Agreement's

requirement that all First Lien Term Loans share ratably in payments. None of the so-called

precedent transactions cited by Serta and the Favored Lenders included an exchange of existing

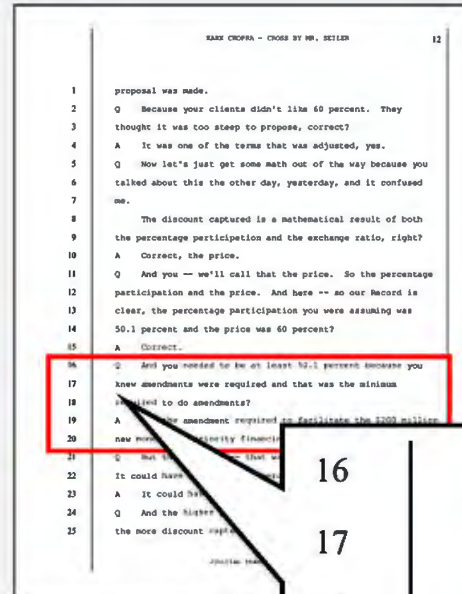
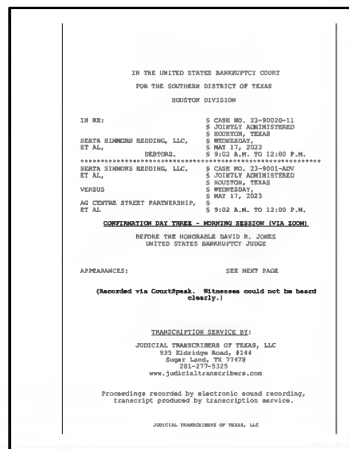
loans on a *non-pro rata* basis.



Defendants' Theory # 7 - Amendments Were Improper



Karn Chopra



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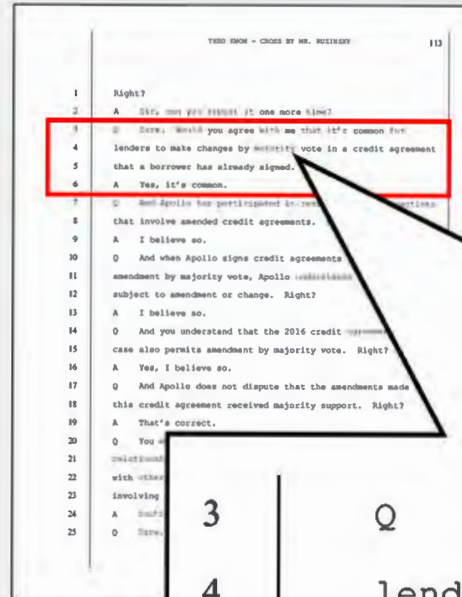
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Q And you needed to be at least 50.1 percent because you knew amendments were required and that was the minimum required to do amendments?

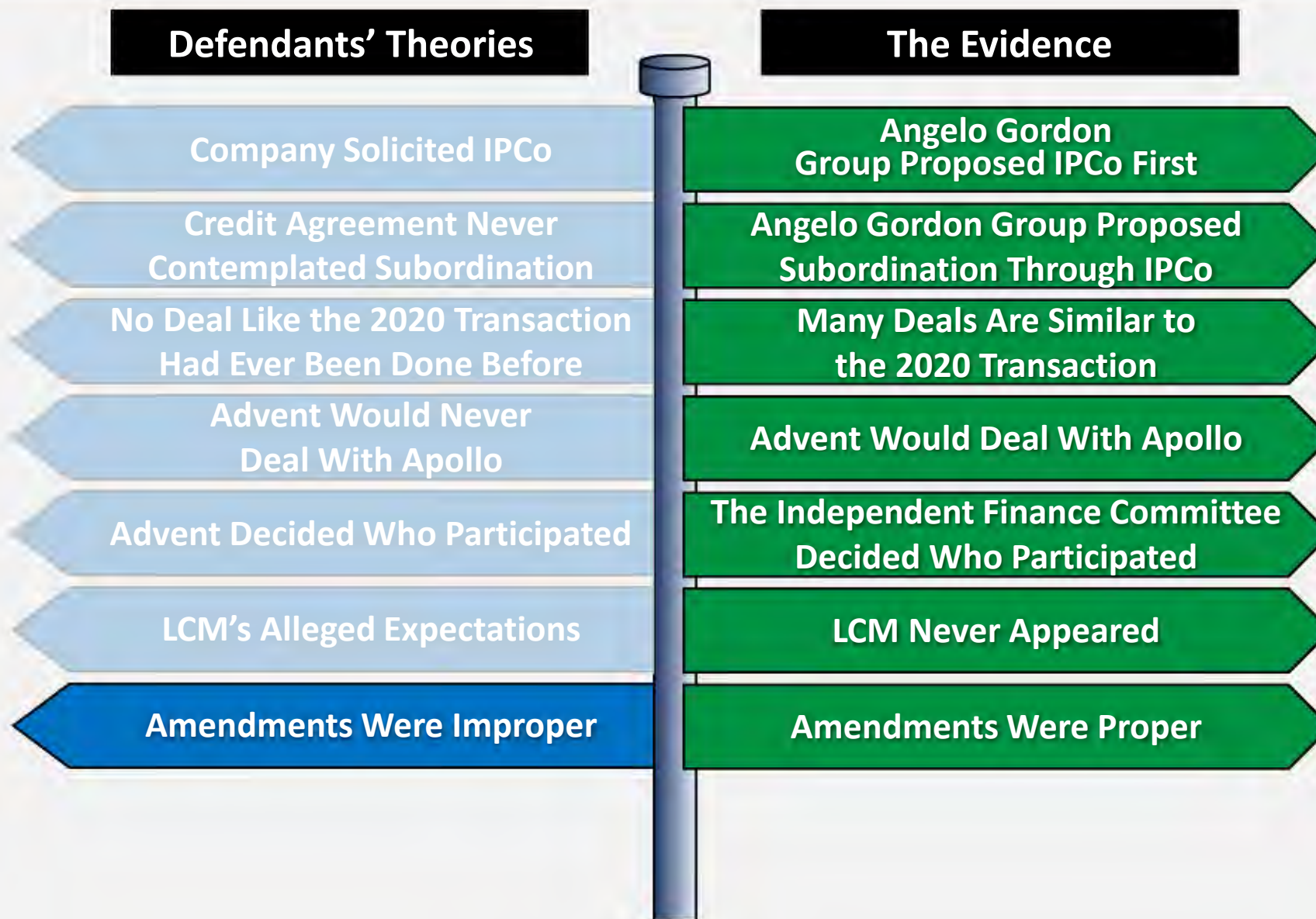
A For the amendment required to facilitate the \$200 million new money superpriority financing, correct.



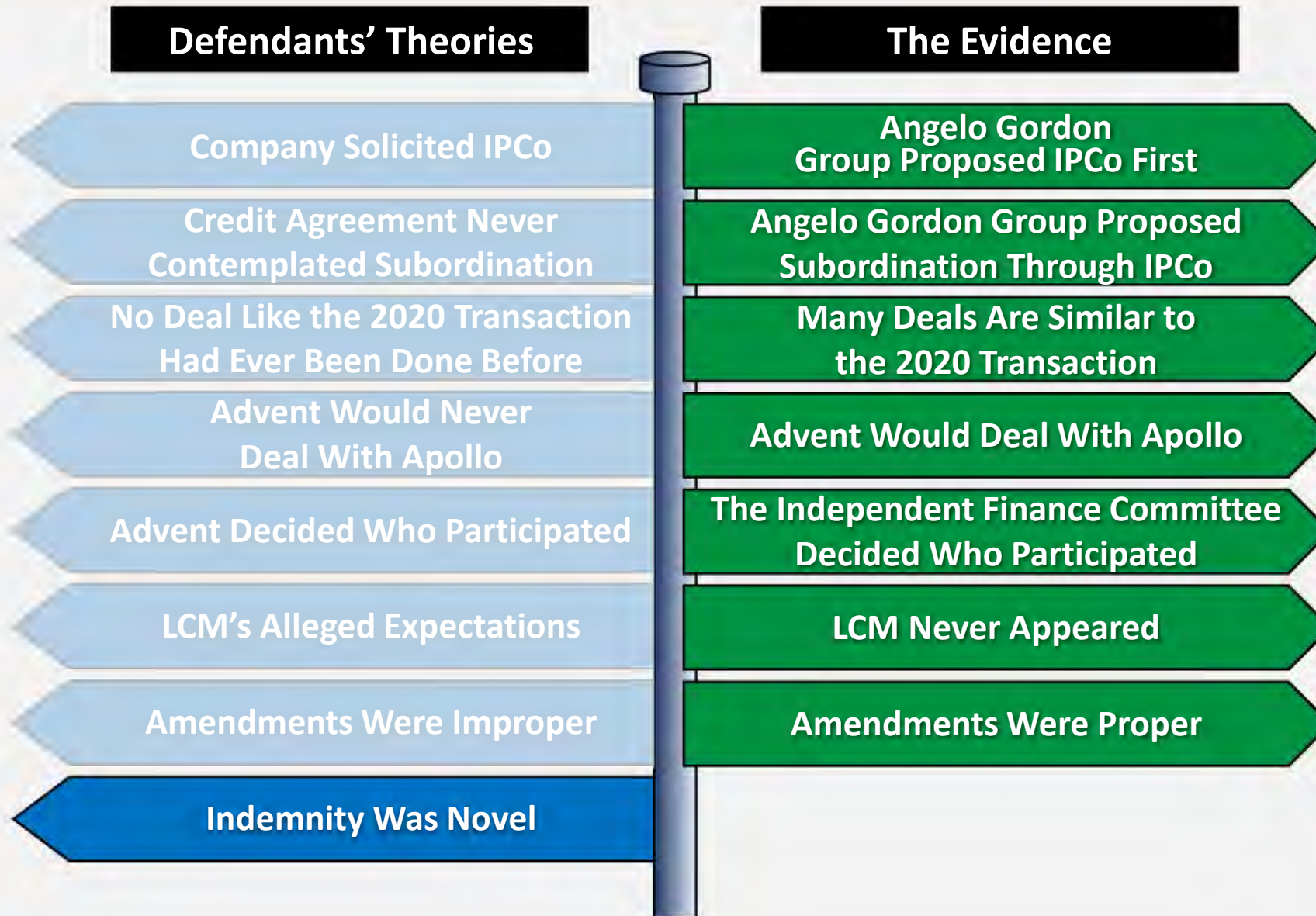
3 Q Sure. Would you agree with me that it's common for
4 lenders to make changes by majority vote in a credit agreement
5 that a borrower has already signed.
6 A Yes, it's common.



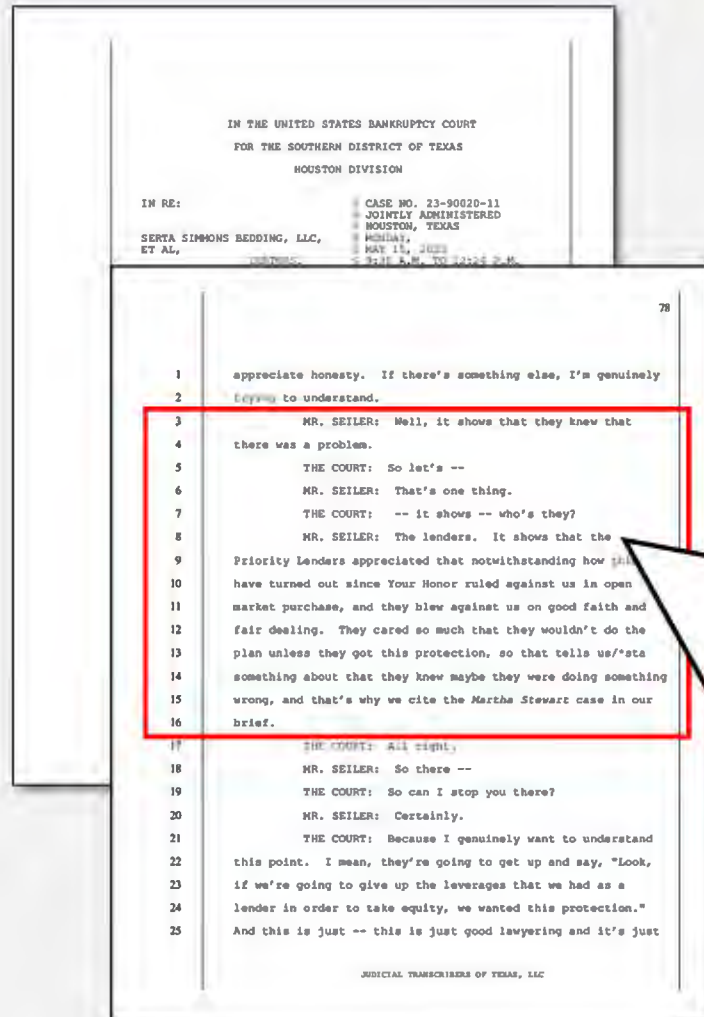
Defendants' Theory # 7 - Amendments Were Improper



Defendants' Theory # 8 – Indemnity Was Novel



Defendants' Theory # 8 – Indemnity Was Novel



3 MR. SEILER: Well, it shows that they knew that
4 there was a problem.

5 THE COURT: So let's --

6 MR. SEILER: That's one thing.

7 THE COURT: -- it shows -- who's they?

8 MR. SEILER: The lenders. It shows that the
9 Priority Lenders appreciated that notwithstanding how things
10 have turned out since Your Honor ruled against us in open
11 market purchase, and they blew against us on good faith and
12 fair dealing. They cared so much that they wouldn't do the
13 plan unless they got this protection, so that tells us/sta
14 something about that they knew maybe they were doing something
15 wrong, and that's why we cite the *Martha Stewart* case in our
16 brief.



Defendants' Theory # 8 – Indemnity Was Novel

Case 23-09001 Document 889-5 "SEALED" Filed in TXSB on 05/14/23 Page 1 of 893

Exhibit 1000

CREDIT AGREEMENT

Dated as of April 26, 2022

among

ENTERPRISE INTERMEDIATE HOLDINGS INC.

AMSIRO HOLDING LLC,

AMSIRO LLC,

as the Borrower,

The Lenders

from Time to Time Party Terms,

and

ALTER DOKUS (US) LLC,

as the Administrative Agent and the Collateral Agent

Case 23-09001 Document 889-5 "SEALED" Filed in TXSB on 05/14/23 Page 106 of 893

on Schedule 1.2.2 or to such other address, facsimile number, electronic mail address or telephone number as shall be designated by such party in a notice to the other parties, and

or, if any other address, facsimile number, electronic mail address or telephone number specified in an Administrative Document or in such other address, facsimile number, electronic mail address or telephone number as shall be designated by such party in a notice to AmSurg Holdings, the Borrower, the Administrative Agent and the Collateral Agent

All such notices and other communications shall be deemed to be given or made upon the

written receipt of (i) a written notice for the relevant party terms and (ii) a written notice for the

party terms. Other notices for the relevant party terms shall be deemed to be given or made

upon the Business Days after the date of the notice, provided that (i) the notice is received by the

party terms and (ii) the notice is received by the party terms. Other notices for the relevant

party terms shall be deemed to be given or made upon the written receipt of (i) a written

notice for the relevant party terms and (ii) a written notice for the party terms. Other

notices for the relevant party terms shall be deemed to be given or made upon the written

receipt of (i) a written notice for the relevant party terms and (ii) a written notice for the

party terms. Other notices for the relevant party terms shall be deemed to be given or

made upon the written receipt of (i) a written notice for the relevant party terms and (ii)

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receipt of (i) a written notice for the relevant party terms and (ii) a written notice for the

party terms. Other notices for the relevant party terms shall be deemed to be given or

made upon the written receipt of (i) a written notice for the relevant party terms and (ii)

13.5 Payment of Expenses: Indemnification.

(a) Each of AmSurg Holdings and the Borrower, jointly and severally, agree:

(i) to pay or reimburse each of the Agents and the Lenders (promptly, and in any event within ten (10) Business Days of written demand) for all their reasonable and documented out-of-pocket costs and expenses (without duplication) incurred in connection with the development, preparation, execution and delivery of, and any amendment, restatement, supplement, modification to, waiver and/or enforcement of this Agreement or therewith, and the consummation and administration of the transactions contemplated hereby and thereby, which, in the case of costs and expenses of counsel, shall be limited to (1) the reasonable fees, disbursements and other charges of one counsel to the Administrative Agent and the Collateral Agent and one counsel to the Lenders taken as a whole (or such other counsel, as may be agreed by the Lenders and the Borrower), one regulatory counsel and (x) one counsel for the Administrative Agent and the Collateral Agent, as applicable, and (y) one counsel for the Lenders, taken as a whole, in each relevant local jurisdiction with the consent of the Borrower (such consent not to be unreasonably withheld, conditioned or delayed) and (2) the costs of any security interest filing, including the registration tax for any UCC-1 filings or any other security interest filings,

(iii) to pay, indemnify, defend and hold harmless each Lender, each Agent and their respective Related Parties (without duplication) (the "Indemnified Persons") from and against any and all losses, claims, damages, liabilities, obligations, demands, actions (including in connection with any bankruptcy case), judgments, suits, costs, expenses, disbursements or penalties of any kind or nature whatsoever regardless of whether any such Indemnified Person is a party thereto and whether any such proceeding is brought by Enterprise Holdings, Envision Holdings, AmSurg Holdings or any other Person (which, in the case of costs and expenses of counsel, shall be limited to the reasonable and documented out-of-pocket fees, expenses, disbursements and other charges of (x) one firm

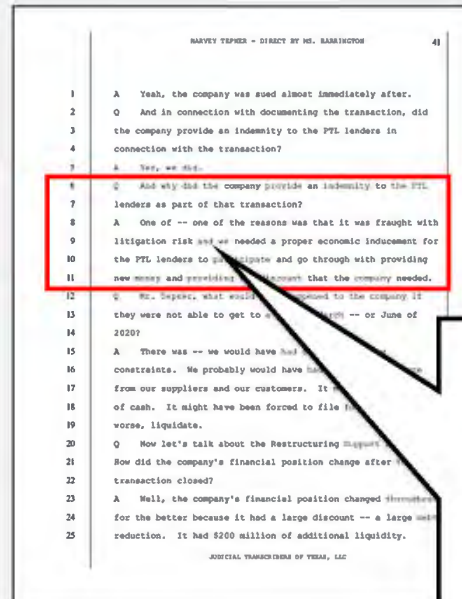
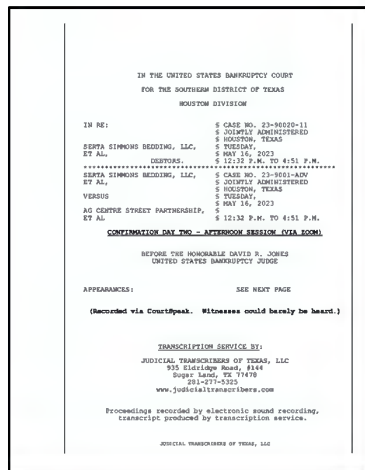
provided that AmSurg Holdings and the Borrower shall have no obligation hereunder to any Indemnified Person with respect to Indemnified Liabilities to the extent arising from (i) the gross negligence or willful misconduct of such Indemnified Person or any of its Related Parties as determined in a final and non-appealable judgment of a court of competent jurisdiction (excluding, in each case, for the avoidance of doubt, arising from any Indemnified Person's participation in the Transactions), (ii) except with respect to the Administrative Agent and its Related Parties, a material breach of the obligations of such Indemnified Person or any of its Related Parties under the terms of this Agreement by such Indemnified Person or any of its Related Parties as determined in a final and non-appealable judgment of a court of competent jurisdiction, or (iii) any proceeding between and among Indemnified Persons that does not involve an act or omission by AmSurg Holdings, the Borrower or any of their Subsidiaries; provided that the Agents, to the extent

SOLELY CONFIDENTIAL - ATTORNEYS EYES ONLY
Debtors' Exhibit No. 359
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Defendants' Theory # 8 – Indemnity Was Novel



Harvey Tepner



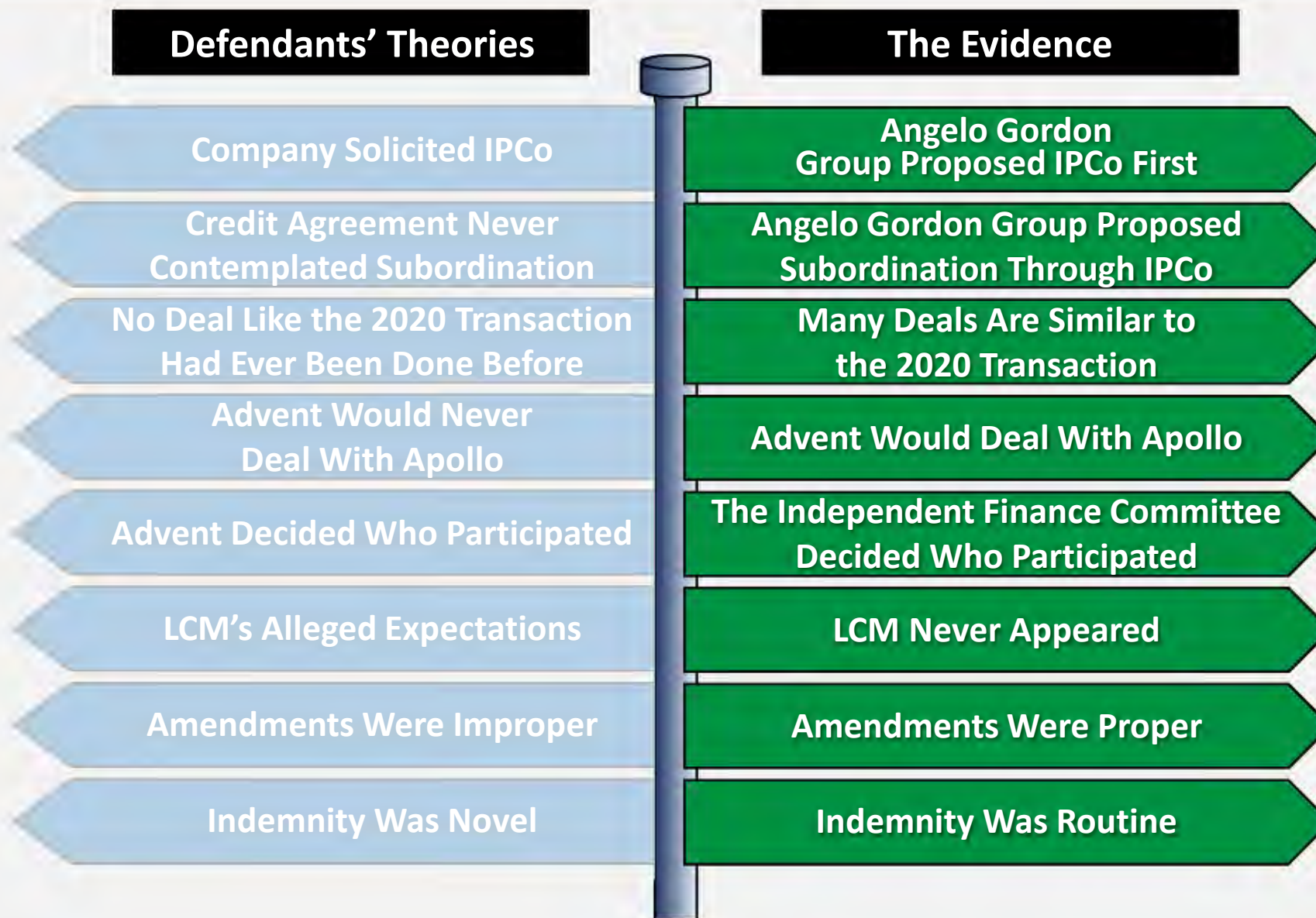
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11

Q And why did the company provide an indemnity to the PTL lenders as part of that transaction?

A One of -- one of the reasons was that it was fraught with litigation risk and we needed a proper economic inducement for the PTL lenders to participate and go through with providing new money and providing the discount that the company needed.



Defendants' Theory # 8 – Indemnity Was Novel



Confirmation Supplemental Briefing Topics

Court's Questions & Considerations

- At the conclusion of last week's hearing, the Court presented the parties with questions and considerations related to Confirmation of the Plan set out below, in addition to those covered by David Lender, including
 - Propriety of the Indemnity Claim: business judgment; not economic coercion
 - Absolute Priority Rule: 9019 settlement; lack of standing to object
 - Death Trap: Plan amendment to remove death trap
- The Debtors' Supplemental Brief and the arguments today address each of these topics and are supported by the evidence before the Court



Plan Settlements

Business Judgment, Indemnity Claims, Feasibility, and Absolute Priority Rule

Plan Settlements – Section 1123(b)(3)(A) & 9019 Standard

- A chapter 11 plan may provide for “the settlement or adjustment of any claim or interest belonging to the debtor or to the estate.” 11 U.S.C. § 1123(b)(3)(A)
- In evaluating settlements under section 1123(b)(3)(A), courts apply “the [same] standards used to evaluate compromises under [Bankruptcy] Rule 9019.” *In re Bigler LP*, 442 B.R. 537, 543 n.6 (Bankr. S.D. Tex. 2010) (citing *In re MCorp Fin., Inc.*, 160 B.R. 941, 951 (S.D. Tex. 1993))
- A court may approve a settlement that is “fair and equitable” and “in the best interest of the estate.” *Conn. Gen. Life Ins. Co. v. United Cos. Fin. Corp. (In re Foster Mortg. Corp.)*, 68 F.3d 914, 917 (5th Cir. 1995)
 - To determine whether a settlement is fair and equitable, courts apply a three part test, and evaluates:
 - (i) The probability of success in litigating the claim subject to settlement, with due consideration for the uncertainty in fact and law;
 - (ii) The complexity and likely duration of litigation and any attendant expense, inconvenience, and delay; and
 - (iii) All other factors bearing on the wisdom of the compromise, including (a) the best interests of the creditors, with proper deference to their reasonable views, and (b) the extent to which the settlement is truly the product of arms-length bargaining, and not of fraud or collusion.

See Off. Comm. of Unsecured Creditors v. Moeller (In re Age Refin., Inc.), 801 F.3d 530, 540 (5th Cir. 2015) (first citing *Jackson Brewing*, 624 F.2d at 602; then quoting *Off. Comm. of Unsecured Creditors v. Cajun Elec. Power Coop., Inc. (In re Cajun Elec. Power Coop., Inc.)*, 119 F.3d 349, 356 (5th Cir. 1997); and then quoting *Foster Mortg.*, 68 F.3d at 917–18) (internal quotation marks omitted)
- The Plan incorporates appropriate settlements that incorporate fair terms that were negotiated at arms’-length and are in the best interests of the Debtors, their estates, and stakeholders



The Evidence Overwhelmingly Supports the Plan Settlements

- The Debtors exercised their valid business judgment in entering into the Restructuring Support Agreement with the Consenting Creditors and the Consenting Equity Holders
 - *“It was the best deal for the company at the time. It allowed us to consummate the transaction contemplated by the RSA to get \$200 million of cash, 400-plus million dollars of debt reduction, have liquidity in the company, and avoid the pitfall of running out of cash and working capital in the Summer of 2020.”* May 16, 2023 Hr’g Tr. 54:4–9 (Tepner)

Consenting Creditors’ Settlement (including Indemnity)

- Settlement reached with the PTL Lenders, as embodied in the RSA and Plan, meets the controlling standard, is in the best interest of the estates, and should be approved
 - Debtors were unlikely to successfully reorganize without the RSA and believed they had a high probability of success on the merits in the litigation on the 2020 Transaction. See May 16, 2023 Hr’g Tr. 132:6-11 (Tepner) (*“And based upon the review of what was happening, the advice of counsel, [the Debtors] believe that the indemnity is proper, that the litigation -- the successful litigation, as I understand it, succeeding under the indemnity under a lack of indemnity against the [PTL Lenders] is small because the transaction was permitted.”*)
 - The go-forward indemnity claim was a critical component of the 9019 settlement reached with the PTL Lenders and not a result of collusion or economic coercion. See May 16, 2023 Hr’g Tr. 139:23 (Tepner) (*“Indemnity was a condition of the deal.”*); see also *id.* at 192:21–193:5 (Chopra) (*testifying that the continuing indemnity was important to the PTL Lenders “in conjunction with their willingness to provide a significant equitization of their debt and to allow the company to emerge on an expeditious basis that the indemnity continue thereafter.”*); see also Disclosure Statement § III.E3.b (noting the Debtors filed their voluntary petitions with approximately \$160 million of liquidity on their balance sheet).



Plan Settlements (Cont'd)

Consenting Creditors' Settlement (including Indemnity) (Cont'd)

- The settlement facilitated the Debtors' expeditious chapter 11 process, avoiding value destruction associated with an extended bankruptcy process. See May 16, 2023 Hr'g Tr. 123:1-9 (Tepner) (*"[I]f we did not do the indemnity today, I don't think we would have a confirmable plan. . . . [the downside of which is] the delay in exiting Chapter 11, the effect on the business, the effect on your customers, the suppliers, employee morale. I think it's a very negative effect."*)

Consenting Equity Holders' Settlement

- The Consenting Equity Holders' Settlement is in the best interest of the estates and should be approved
- As a result of the settlements, the Consenting Equity Holders are:
 - Facilitating and cooperating in the implementation of the Plan, including with respect to Restructuring Transactions, through their role as an equity holder and as a party with certain contractual rights vis-à-vis other equity holders (e.g., drag rights), and
 - Through the merger of Dawn Holdings into Dawn Intermediate, transferring certain miscellaneous assets to Dawn Intermediate, all of which unquestionably provide value to the Debtors and their estates

Creditors' Committee Global Settlement

- The Debtors exercised their valid business judgment in entering into the Creditors' Committee Global Settlement
 - *"It was one that was actionable to allow us to get to confirmation and try to get out of chapter 11 in a more speedy manner"*
May 16, 2023 Hr'g Tr. 56:18–20 (Tepner)
- The Creditors' Committee Global Settlement resolved all claims and causes of action purported by the Creditors' Committee, including claims related to the 2020 Transaction
- The Creditors' Committee affirmed the settlement with the PTL Lenders, including the indemnity, in their own settlement, which provides further evidence of the wisdom of the compromise and the wishes of the creditors



The Evidence in Support of the Debtors' Business Judgment is Overwhelming and Unrefuted

- In 2020, as the impact of the COVID-19 pandemic spread throughout the United States forcing businesses to halt operations and customers to quarantine, the Company faced a liquidity crisis
- The Finance Committee was tasked to consider various liability management transactions to address the Company's liquidity concerns, was delegated authority to make all decisions regarding Debtors' restructuring, and ran an independent process with sound governance
 - After weighing multiple proposals through a competitive process, the Finance Committee approved the 2020 Transaction to recapitalize the Company's debt
 - Mr. Shah testified: “[t]he [PTL Group] proposal was the best in terms of providing the amount of new liquidity the company needed. It provided for greater discount capture. It provided for less interest expense in total. It provided a good step two capacity, and it had the participation and support of a larger number of lenders.” See May 15, 2023 PM Hr’g Tr. 48:10–15
 - Mr. Tepner testified that, in approving the 2020 Transaction, the Finance Committee evaluated several proposals, including from the PTL Group and the Non-PTL Group, and “selected a modified [PTL Group] proposal which provided for \$200 million of new money” because, among other things, it offered a “dramatically different amount of discount capture that was very important to the Company to help them delever its balance sheet.” See May 16, 2023 Hr’g Tr. 37:8–15
- The Finance Committee and Debtors' management were not subject to any undue influence from Debtors' equity sponsors, Advent International, or the PTL Lenders, and negotiations were at arms'-length



The Evidence in Support of the Debtors' Business Judgment is Overwhelming and Unrefuted (Cont'd)

- In 2022, faced with prolonged macroeconomic uncertainty and looming debt maturities, the Company initiated refinancing efforts before ultimately pursuing restructuring negotiations, culminating in the filing these chapter 11 cases to implement the Plan, which would allow it to continue operating with a substantially healthier balance sheet by restructuring the Debtors' total debt of approximately \$1.6 billion
 - Mr. Tepner testified, in early 2022, after experiencing *“severe headwinds in all aspects of its business, including overall market deterioration that affected all mattress producers”* the Company evaluated a refinancing of its debt and *“engaged Evercore to seek potential investors or refinanciers and was not able to obtain new investment.”* The Company, through Evercore, *“contacted 20 parties to see if their interest in a \$1.6 billion capital raise”* but no parties were interested. See May 16, 2023 Hr'g Tr. 42:24–43:1, 45:2–3
- The Plan was result of months of rigorous, arms'-length negotiations among Debtors and their key stakeholders, in which Debtors examined all potential strategic options
 - Mr. Tepner testified, the Company *“reached out to its existing lenders for a restructuring transaction”* which included attempts to reach a consensual resolution with the Non-PTL Group. See May 16, 2023 Hr'g Tr. 47:12–13
 - The Debtors analyzed alternative proposals, including from the PTL Group and the Non-PTL Group, and ultimately determined the proposal from the PTL Group was in the best interests of the Debtors and their estates
- The Debtors continued to assess their options after proposing the Plan, including weighing and analyzing an alternative proposal from Citadel, which was received after the Debtors solicited votes for the Plan
 - Even after the Debtors solicited votes on the Plan, the Finance Committee evaluated and concluded that the alternative proposal from Citadel *“was not in the best interest of the company.”* See May 16, 2023 Hr'g Tr. 54:24–25 (Tepner)
 - The Citadel proposal would require re-solicitation, delaying confirmation of the Plan and consequently adversely impacting the Debtors' relationship and reputation with their customers, suppliers, and employees, and financials given the additional expenses associated with remaining in chapter 11. See May 16, 2023 Hr'g Tr. 122:11–15, 123:6–10 (Tepner); May 17, 2023 PM Hr'g Tr. 141:12–19 (Linker)



The Debtors' Plan is Feasible and No Evidence Supports a Different Conclusion

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- The Plan is feasible if it is not likely to be followed by liquidation or need for further financial reorganization. 11 U.S.C. § 1129(a)(11)
 - Burden of Proof: ***Preponderance of the evidence***. *In re Save Our Springs (S.O.S.) Alliance, Inc.*, 632 F.3d 168, 172 (5th Cir. 2011)
 - “[T]he [bankruptcy] court ***need not require a guarantee of success*** of a reorganization plan. . . [o]nly a reasonable assurance of commercial viability is required.” *In re Briscoe Enters., Ltd., II*, 994 F.2d 1160, 1165–66 (5th Cir. 1993)
 - As a matter of law, ***“the mere prospect of financial uncertainty cannot defeat confirmation on feasibility grounds since a guarantee of the future is not required.”*** *In re SCC Kyle Partners, Ltd.*, 518 B.R. 393, 406 (W.D. Tex. 2014)
 - “Where the projections are ***credible***, based upon the balancing of all testimony, evidence, and documentation, ***even if the projections are aggressive, the court may find the plan feasible.***” *In re T-H New Orleans*, 116 F.3d 790, 802 (5th Cir. 1997)



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Business Plan is Reasonable and Based on Reasonable Assumptions

- The feasibility analysis relies on Financial Projections that were developed using the Company's Business Plan and based on a detailed set of assumptions that have been pressure tested and benchmarked against the Company's historical financial performance. See May 17, 2023 PM Hr'g Tr. 136:18–138:3 (Linker); May 16, 2023 Hr'g Tr. 59:13–17 (Tepner)
 - When asked how the Debtors prepared the financial projections, Mr. Linker explained that he *“and the management team took upon an exercise to build on a new business plan to turn around the financial performance of the company. So, it was a set of strategic initiatives that would grow our sales, grow our market share, improve our cost structure, improve our profitability. We worked on that for a couple of months and pressure tested those assumptions, and then ultimately, those initiatives and that business plan is what formed the inputs for the financial projections.”* May 17, 2023 Hr'g Tr. 137:3–11 (Linker)
- Mr. Linker testified that the Debtors would not include large, contingent assets and liabilities in the Financial Projections where there was uncertainty around the amount and timing of an event. Consistent with this practice, the Debtors did not include any potential cash payments in connection with the indemnification obligation or any potential tax refund in connection with the restructuring in the Financial Projections. Exclusion of such assets and liabilities in the financial projections was an exercise of reasonable business judgment
 - *“[W]ithout knowing the amount and the timing, it's not possible for me to include [the indemnity obligation] in the financial projection.”* May 17, 2023 PM Hr'g Tr. 139:16–18 (Linker)
 - *“[S]imilar to the indemnity, there's some uncertainty around the amount we're going to have to work through with the IRS around finalizing the amount, and presumably, there'd be some sort of audit process around a refund of that size, and also, the timing is very much uncertain. So, without knowing the amount or the timing of the payment, or the cash inflow, in that case, we did not include it in the projections.”* May 17, 2023 PM Hr'g Tr. 140:4–11 (Linker)



The Debtors' Plan is Feasible

- Debtors have ample liquidity to service future debt payments and the Debtors' reorganization is not likely to be followed by a liquidation or another reorganization
 - *“The cash flow projections of the financial projections show that we’re cash flow positive for the period of 2023 to 2027 in the aggregate. So, on that basis, I conclude that the company is able to make all the payments required under the plan. I also conclude that that would mean the company’s liquidity position and capital structure would be healthy and not require another restructuring.”* May 17, 2023 PM Hr’g Tr. 140:25–141:7 (Linker)
 - Nothing has changed since the Financial Projections were first developed that would cause the Financial Projections to be modified or altered. See May 17, 2023 PM Hr’g Tr. 138:23–139:1 (Linker)



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A Contingent Indemnity Claim Does Not Render Plan Infeasible and Objectors Presented No Evidence to the Contrary

- The structure of the Plan mitigates the risk that the indemnity is called
- The Plan's condition precedent of a favorable ruling on the Adversary Proceeding operates as a safety valve to limit the downside exposure to the Debtors
- The Plan is feasible regardless of whether Debtors are obligated to indemnify the PTL Lenders. See May 16, 2023 Hr'g Tr. 135:7–12 (Tepner) (explaining his probability analysis leading to an estimated indemnity claim of below \$200 million which *"might be solvable."*)
- Indemnity Claim will only kick in *if* the Non-PTL Lenders obtain a final non-appealable judgment in their favor, and the likelihood of Non-PTL Lenders prevailing on their Claims and calling the indemnity, and in a manner that renders the Plan infeasible, is unlikely
 - *"But the actual number is unknown because there's an issue of . . . whether the litigation would succeed, whether the strength of the litigation had – could result in damages of a material amount, and there's a series of probabilities. Could the litigation succeed? What would the damages be? And that would form what the potential value is. And based upon the review of what is happening, the advice of counsel, they believe that the indemnity is proper . . . succeeding under the indemnity . . . against the [PTL Lenders] is small because the transaction was permitted."*
May 16, 2023 Hr'g Tr. 131:24–132:11 (Tepner)



Absolute Priority Rule

- Intermediate Equity Interests are receiving value under the Plan in exchange for the consideration they provided to the Debtors pursuant to the Consenting Equity Holders' Settlement (as subsequently settled again pursuant to the Creditors' Committee Global Settlement)
- Holders of Intermediate Equity Interests are not receiving distribution on account of such interests, rather the \$1.5 million distribution is consideration for what the Consenting Equity Holders are providing the Debtors
 - *“So that Advent would enact a series of measures that would allow the reorganized company access up to \$54 million of potential tax benefits, including tax refunds. And it was seen as a **pretty good trade**.”* May 16, 2023 Hr'g Tr. 51:4–9 (Tepner)
- Debtors entered into the Consenting Equity Holders' Settlement in an exercise of their business judgment
- As discussed in slide 100, as part of the Consenting Equity Holders' Settlement, the Consenting Equity Holders are (i) facilitating and cooperating in connection with the implementation of the Plan, inclusive of the Restructuring Transactions as set forth in the Plan Supplement, through their role as an equity holder and as a party with certain contractual rights vis-à-vis other equity holders (e.g., drag rights), and (ii) through the merger of Dawn Holdings, transferring certain miscellaneous assets to Dawn Intermediate, all of which unquestionably provide value to the Debtors and their estates
- The treatment of Consenting Equity Holders under the RSA, implemented by the Plan, does not impact Classes 5, 6A or 6B
- Neither the Non-PTL Lenders nor the LCM Lenders has standing to raise the absolute priority rule objection included in their objections (Docket Nos. 824 and 825) because the recoveries for Classes 5, 6A, and 6B are provided as part of a voluntary carve out from the collateral securing the Class 4 FLSO Claims, and not on account of any value that holders of Class 5 Claims would otherwise be entitled to recover



Exculpations

Exculpations



Exculpation Provision: Consistent with Fifth Circuit Case Law

- The inclusion of the Debtors' two independent directors as "Exculpated Parties" is consistent with Fifth Circuit precedent, including *Highland Capital* and *Pacific Lumber*
- Exculpation of Mr. Tepner and Ms. Hilson is supported by section 1107 and 1142(b) of the Bankruptcy Code
 - **Section 1107:** expressly recognized and applied by the *Highland Capital* court to each of the directors. *Highland Cap. Mgmt., L.P.*, 48 F.4th 419 (5th Cir. 2022)
 - **Section 1142(b):** In addition to section 1107, for any acts following entry of the Confirmation Order, the provisions of the Plan and Confirmation Order directing directors and officers to implement the Plan and all of the restructuring actions thereunder in accordance with section 1142 provides a further basis to support exculpation. *See, e.g.*, Confirmation Order §§ 3-4, Plan § 5.3(d)
- In *Highland Capital*, the court reasoned that "[l]ike a debtor-in-possession [under section 1107 of the Bankruptcy Code], the Independent Directors are entitled to all the rights and powers of a trustee" and were therefore entitled to exculpation. *NexPoint Advisors, L.P. v. Highland Capital Management (In re Highland Cap. Mgmt., L.P.)*, 48 F.4th 419, 437–38 (5th Cir. 2022)
 - The Fifth Circuit's findings in *Highland Capital* were not limited to the unique factual circumstances of that case, but were a natural extension of Fifth Circuit case law entitling bankruptcy trustees acting within the scope of their duties to limited immunity. *See Pacific Lumber*, 584 F.3d 229 (5th Cir. 2009) (approving exculpation of a creditors' committee and its members because section 1103(c) of the Code implies "qualified immunity for [committee members'] actions within the scope of their duties")
 - *See, e.g., Hilal v. Williams (In re Hilal)*, 534 F.3d 498, 501 (5th Cir. 2008) ("In this circuit, trustees cannot be subjected to personal liability for damages to the bankruptcy estate unless they are found to have acted with gross negligence." (citation omitted))
 - In approving the exculpation of each of the directors under the *Highland Capital* Plan, the Fifth Circuit expressly adopted and applied Fifth Circuit precedent providing qualified immunity for trustees to directors acting as fiduciaries for a debtor in possession within the scope of duties under section 1107 of the Code



Exculpation Provision: Consistent with Fifth Circuit Case Law (Cont'd)

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- Subsequent courts in this district have approved chapter 11 plans that provide exculpation to independent directors acting in a fiduciary capacity for the debtors-in-possession
 - *In re Pipeline Health Sys., LLC*, No. 22-90291 (MI) (Bankr. S.D. Tex. Jan. 13, 2023) (Docket No. 1041) at 24 (approving the exculpation of independent directors); *In re Talen Energy Supply, LLC*, No. 22-90054 (MI) (Bankr. S.D. Tex. Dec. 20, 2022) (Docket No. 1760) (same); *In re Altera Infrastructure L.P.*, No. 22-90130 (MI) (Bankr. S.D. Tex. Nov. 4, 2022) (Docket No. 533) (same)
- The reasoning of *Highland Capital* applies with equal force to the Debtors' independent directors in these Chapter 11 Cases



Independent Directors Acted as Estate Fiduciaries

- Each of the independent directors of the Finance Committee should be exculpated under the Plan because (i) Harvey Tepner and Joan Hilson performed the duties of a debtor in possession under section 1107(a), and (ii) each of these independent directors of the Debtors acted within the scope of their duties, including their fiduciary duties, during these Chapter 11 Cases
- The uncontroverted evidence establishes that
 - the Finance Committee was established to consider, evaluate, develop, negotiate and select among various strategic alternatives;
 - **Mr. Tepner** testified that: *“The company was looking at refinancing its debt when it came due. It was concerned about liquidity. It was concerned about its overall leverage. And they wanted to have an independent group of directors to evaluate potential alternatives that were not conflicted.”* May 16, 2023, Hr’g Tr. 11:23–12:2 (Tepner)
 - the independent directors were properly appointed by the Board to serve on the Finance Committee;
 - The Debtors filed the resolutions establishing the Finance Committee and appointing the independent directors as Debtors’ Exhibits Nos. 2, 21, and 274
 - There is no evidence to the contrary in the record



Independent Directors Acted as Estate Fiduciaries (Cont'd)

- The uncontroverted evidence establishes that (cont'd)
 - the members of the Finance Committee consistently exercised oversight of the Debtors' business and restructuring process, providing updates and recommendations to the Board during the lead up to the 2020 Transaction and throughout the restructuring process, including, but not limited to, when reviewing and approving the Plan (including the release and exculpation provisions), the Disclosure Statement, the Restructuring Support Agreement, and the Plan Settlements;
 - **Mr. Tepner** testified that he and Ms. Hilson carried out their fiduciary duties by *“review[ing] the Plan of Reorganization and ha[ving] discussions with the company’s professionals, and sometimes the management, about the type of Plan of Reorganization that would work, the debt structure, the allocation of the value of the company, [reviewing] the business plan, [reviewing] financial projections, be[ing] as fully engaged as a director could be, sometimes plus provide guidance as to what they should be looking at, question assumptions, question proposals, make sure I was comfortable and understood them all.”* May 16, 2023 Hr’g Tr. 59:9–17 (Tepner)
 - The Debtors filed the Finance Committee minutes approving the commencement of the Chapter 11 Cases, entry into the Restructuring Support Agreement, the Plan (including the release and exculpation provisions) and the Disclosure Statement at Debtors’ Exhibit No. 293
 - in all stages of these Chapter 11 Cases, the independent directors of the Finance Committee believed that they owed fiduciary duties to the Debtors and the Debtors’ estates and were guided by such duties by seeking to maximize the value of the Debtors’ estates; and
 - **Mr. Tepner** testified that he and Ms. Hilson continued to serve as independent directors of the Finance Committee after the Debtors filed for bankruptcy and, during the post-petition period, believed they owed duties to the Debtors and their estates, acted as a fiduciary for the Debtors and their estates, and sought to exercise those fiduciary duties in connection with that role. See May 16, 2023 Hr’g 58:7–60:5 (Tepner)



Independent Directors Acted as Estate Fiduciaries (Cont'd)

- The uncontroverted evidence establishes that (cont'd)
 - The independent directors of the Finance Committee conducted themselves diligently in their respective roles and acted in the best interests of the entity to which they owed their fiduciary duty
 - Applicable state law provides that directors are entitled to a presumption that they act in accordance with their fiduciary duties and no contrary evidence was presented
 - **Mr. Tepner** testified that:
 - The nature of the duties owed was to “[pay] attention to the most important one, to try and help the company fashion a Plan of Reorganization or recapitalization that would put it on a solid financial footing, improve its prospects for the future, maintain its long-term viability, ideally continue to support the employment and the business efforts of the company and its employees, and to provide a new capital structure that would allow it to not have to be reorganized in the future.” May 16, 2023 Hr’g Tr. 58:19–59:1 (Tepner)



Other Plan Objections and Plan & Confirmation Order

Resolved & Outstanding Plan Objections, 1129 Factors,
Plan & Confirmation Order Walk-Through

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Status of Other Plan Objections

- The Debtors have consensually resolved all but 1 remaining Plan objections

No.	Objecting Party / Docket No.	Summary of Objection	Status & Debtors' Response
1.	Maricopa County Treasurer ("MCT") (Docket No. 617)	MCT asserts that the Plan appears to treat secured tax claims in the same manner as priority tax claims and fails to provide for the accrual of statutory interest on these secured liens.	Resolved. See Response Chart (Docket No. 879)
2.	Texas Comptroller of Public Accounts (Docket No. 821)	The Texas Comptroller objects to the Plan to the extent that it restricts their rights to enforce state law in connection with property that is presumed to be abandoned under the Texas Property Code.	Resolved. See Response Chart (Docket No. 879)
3.	Minority Licenses (Docket No. 827)	Minority Licensees assert that the Plan may extinguish (a) their rights of setoff and recoupment and (b) arbitration rights under the 2004 Restructuring Agreement	Resolved. The Debtors have agreed language with the Minority Licensees that clarifies any rights under section 553 of the Bankruptcy Code are preserved included in the Confirmation Order (Docket No. 981). See Response Chart (Docket No. 979)
4.	Alan and Ruth Humphries (Docket No. 829)	Humphries assert that (a) SSB Logistics is self-insured and failed to make proper disclosures of the same in the Schedules and Disclosure Statement, (b) Plan is not proposed in good faith, and (c) their unsecured prepetition claim should not be classified with Class 6B because their claim is covered by insurance	Resolved. The Debtors have agreed language to be included in the Confirmation Order that mirrors the settlement terms reached with other Class 6B litigation counterparties. See Response Chart (Docket No. 979)
5.	Texas Taxing Authorities (Docket No. 823)	Texas Taxing Authorities assert that (a) Plan lacks specificity on timing of payments, (b) Plan does not properly provide for interest payments, (c) Plan does not retain liens on Texas Taxing Authorities' collateral, (d) Texas Taxing Authorities should be able to amend their 2023 tax claim, and (e) Plan provides for an Exit Financing Facility that may prime or subordinate their senior secured tax liens	Resolved. See Response Chart (Docket No. 879)



Status of Other Plan Objections (Cont'd)

No.	Objecting Party / Docket No.	Summary of Objection	Status & Debtors' Response
6.	Louisiana Department of Revenue ("LDR") (Docket No. 830)	LDR asserts that the Plan (a) should provide treatment of Administrative Claims under 1129(a)(9)(A), not 1129(A)(9) (b) does not provide for LDR's interest and penalties allowable under 503(b)(1)(B), (c) may prejudice Priority Tax Claims, and (d) provides for estimation of a greater proportion of claims than contemplated under § 502.	Resolved. See Response Chart (Docket No. 879)
7.	DECD (Docket No. 917)	DECD asserts that (a) Class 6B Cash Contribution should be allocated differently (b) Plan violates § 1123(a)(3) because it doesn't clearly specify treatment, and (c) DECD's due process rights have been violated	Resolved. The Debtors and DECD have agreed upon language included in the Confirmation Order (Docket No. 981). See Response Chart (Docket No. 979)
8.	Cameron Thierry (Docket Nos. 826, 891)	Mr. Thierry asserts that the Plan bars him from proceeding in his prepetition employment discrimination complaint for damages.	Unresolved. The Objection and Mr. Thierry's Brief reiterates issues already pending before the Bankruptcy Court in unrelated Motions brought by Mr. Thierry. Mr. Thierry's claim will ultimately be liquidated and reduced to an Allowed Amount, if any, in accordance with the procedures set out in the Plan. The Debtors have proposed language to Mr. Thierry for inclusion in the confirmation order that mirrors the settlement terms reached with other Class 6B litigation counterparties as reflected at paragraphs 72–73 and 77 and 79 of the Confirmation Order. Mr. Thierry does not agree to the inclusion of the proposed language to resolve his pending objection.



Section 1129

- The Plan satisfies all requirements of Section 1129 of the Bankruptcy Code. Uncontested provisions include:
 - § 1129(a)(3): Plan has been proposed by the Debtors in good faith. Confirmation Brief ¶¶ 123–134
 - § 1129(a)(4): Professional fees are subject to Court approval. Plan § 2.2; Linker Decl. ¶ 16; Confirmation Brief ¶ 134
 - § 1129(a)(5): Directors and officers will be disclosed. Linker Decl. ¶ 17; Confirmation Brief ¶ 135
 - § 1129(a)(8): three out of five voting classes have accepted the Plan; cramdown only of two voting classes, subordinated claims (if any), and equity interests. Solicitation Decl. Exhibit A-1; Confirmation Brief ¶¶ 142–143
 - § 1129(a)(9): Plan distributions to certain nonvoting classes are appropriate. Plan § 2.1; Confirmation Brief ¶ 144
 - § 1129(a)(10): Plan was accepted by multiple voting classes without regard to insiders. Confirmation Brief ¶¶ 145 - 146
 - § 1129(a)(12): Confirmation Order provides for payment of statutory fees. Confirmation Order ¶ 40
 - § 1129(b): Plan complies with cramdown provision on two classes deemed to reject. Confirmation Brief ¶ 164–178



Section 1129 (Cont'd)

- Outstanding disputed issues have all been disproved by either evidence and/or legal argument:
 - Plan contains all required provisions and properly contains permissible provisions (Non-PTL Lenders Objection & LCM Joinder)
 - Plan Settlements reflect Debtors' valid business judgment
 - Appropriateness of go-forward indemnity (Non-PTL Lender Objection, LCM Joinder & Citadel Objection)
 - Value of distribution to holders of Intermediate Equity Interests is not in violation of the Absolute Priority Rule (Non-PTL Lenders Objection & LCM Joinder)
 - Plan is feasible (Citadel Objection)
 - Appropriateness of exculpations (U.S. Trustee Objection)



